

## 13 Am. Jur. 2d Carriers One III A Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Carriers

George L. Blum, J.D.; John Bourdeau, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Jill Gustafson, J.D.; Karl Oakes, J.D.; Lucas Martin, J.D.; and Jeffrey J. Shampo, J.D.

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### West's Key Number Digest

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### A.L.R. Library

A.L.R. Index, Carriers

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## 13 Am. Jur. 2d Carriers § 26

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### Carriers

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## § 26. Government power to regulate common carriers

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### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  1

Common carriers, in the exercise of their public functions, are subject to governmental control and regulation.<sup>1</sup> They hold their property and exercise their privileges and franchises subject to governmental control and regulation, which includes not only the regulation of the manner in which they transact their business but also the price that may be charged for their services.<sup>2</sup>

When a carrier devotes its property to a use in which the public has an interest, it in effect grants to the public an interest in that use and must submit to regulation for the common good; the carrier may withdraw its grant by discontinuing the use, but so long as it maintains that use, it must submit to government control.<sup>3</sup>

### Observation:

Since if carrier service is not properly rendered it causes loss and inconvenience to the public and perhaps endangers the lives and property of all those to whom it is extended, it is a fundamental government duty to require that useful public service be provided.<sup>4</sup>

The power to regulate carrier operations by direct action is legislative rather than judicial in its nature.<sup>5</sup>

Footnotes

- <sup>1</sup> Wilson v. New, 243 U.S. 332, 37 S. Ct. 298, 61 L. Ed. 755 (1917); Michigan Cent. R. Co. v. Michigan R. Commission, 236 U.S. 615, 35 S. Ct. 422, 59 L. Ed. 750 (1915); Missouri Pac. Ry. Co. v. State of Nebraska, 217 U.S. 196, 30 S. Ct. 461, 54 L. Ed. 727 (1910); Railroad Commission of Georgia v. Louisville & N. R. Co., 140 Ga. 817, 80 S.E. 327 (1913); Commonwealth v. Abell, 275 Ky. 802, 122 S.W.2d 757 (1938); State v. Chicago, M. & St. P. Ry. Co., 118 Minn. 380, 137 N.W. 2 (1912); Hocking Valley R. Co. v. Public Utilities Commission, 92 Ohio St. 9, 110 N.E. 521 (1915); Chicago, R.I. & P. Ry. Co. v. State, 1917 OK 471, 67 Okla. 10, 168 P. 239 (1917).  
The operation of a common carrier is a mere privilege, not an inherent right, and may be acquired only by a permit, license, or franchise emanating from a government unit. Hamid v. Metro Limo, Inc., 619 So. 2d 321 (Fla. 3d DCA 1993).  
Under the “common carriers” provision of the state constitution, all railroad carriers are subject to legislative control. BNSF Railway Co. v. Public Utilities Com., 218 Cal. App. 4th 778, 160 Cal. Rptr. 3d 492 (3d Dist. 2013).
- <sup>2</sup> Southern Pac. Co. v. Railroad Commission of Cal., 13 Cal. 2d 89, 87 P.2d 1055 (1939).
- <sup>3</sup> Lyon & Hoag v. Railroad Commission, 183 Cal. 145, 190 P. 795, 11 A.L.R. 249 (1920); City of Chicago v. O’Connell, 278 Ill. 591, 116 N.E. 210, 8 A.L.R. 916 (1917); Commonwealth v. Abell, 275 Ky. 802, 122 S.W.2d 757 (1938); Marshall v. Bush, 102 Neb. 279, 167 N.W. 59 (1918); State v. Kuykendall, 137 Wash. 602, 243 P. 834, 55 A.L.R. 954 (1926), *aff’d*, 275 U.S. 207, 48 S. Ct. 41, 72 L. Ed. 241 (1927).
- <sup>4</sup> Wilson v. New, 243 U.S. 332, 37 S. Ct. 298, 61 L. Ed. 755 (1917); State v. Jacksonville Terminal Co., 96 Fla. 295, 117 So. 869, 59 A.L.R. 324 (1928); Bentler v. Cincinnati, C. & E. Ry. Co., 180 Ky. 497, 203 S.W. 199 (1918); Hocking Valley R. Co. v. Public Utilities Commission, 92 Ohio St. 9, 110 N.E. 521 (1915); Puget Sound Elec. Ry. v. Railroad Com’n of Washington, 65 Wash. 75, 117 P. 739 (1911).
- <sup>5</sup> Hammond Lumber Co. v. Public Service Commission, 96 Or. 595, 189 P. 639, 9 A.L.R. 1223 (1920).

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## § 27. Extent of public regulation

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### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  1

For the purposes of public regulation, there is a fundamental distinction between the acts of common carriers in the performance of their public duties and those done in the exercise of their purely private right to manage and control their own property outside of those duties.<sup>1</sup> With respect to matters pertaining to the exercise of their public functions, the right of regulation extends to the extent necessary to satisfy the reasonable requirements of service to meet the just demands of the public to be served.<sup>2</sup>

The power to regulate common carriers is not necessarily destroyed because those regulations may, to some extent, affect the power to contract or even affect contracts already made.<sup>3</sup>

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### Footnotes

<sup>1</sup> Atchison, T. & S.F. Ry. Co. v. Railroad Commission of State of California, 283 U.S. 380, 51 S. Ct. 553, 75 L. Ed. 1128 (1931); Chicago, M. & St. P. R. Co. v. State of Wis., 238 U.S. 491, 35 S. Ct. 869, 59 L. Ed. 1423 (1915); State v. Wells, 96 Fla. 591, 118 So. 731, 60 A.L.R. 1072 (1928).

<sup>2</sup> State v. Atlantic Coast Line R. Co., 56 Fla. 617, 47 So. 969 (1908).

<sup>3</sup> Railroad Commission of Georgia v. Louisville & N. R. Co., 140 Ga. 817, 80 S.E. 327 (1913).



## 13 Am. Jur. 2d Carriers § 28

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## § 28. Constitutional limits

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### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  1, 2

The right to regulate common carriers is subject to the constitutional restrictions against the impairment of vested rights or the denial of equal protection or due process.<sup>1</sup> The companies' property is entitled to protection against unlawful invasion by the government as much as the property of private persons.<sup>2</sup> The action of a state that in effect deprives a carrier of its property rights in a manner or to an extent not contemplated by law is a deprivation of property without due process of law.<sup>3</sup>

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### Footnotes

<sup>1</sup> Atchison, T. & S.F. Ry. Co. v. Railroad Commission of State of California, 283 U.S. 380, 51 S. Ct. 553, 75 L. Ed. 1128 (1931); Norfolk & W. Ry. Co. v. Conley, 236 U.S. 605, 35 S. Ct. 437, 59 L. Ed. 745 (1915); Atlantic Coast Line R. Co. v. Coachman, 59 Fla. 130, 52 So. 377 (1910); City of Chicago v. O'Connell, 278 Ill. 591, 116 N.E. 210, 8 A.L.R. 916 (1917); State v. Chicago, M. & St. P. Ry. Co., 118 Minn. 380, 137 N.W. 2 (1912); Puget Sound Traction Light & Power Co. v. Public Service Com'n, 100 Wash. 329, 170 P. 1014, 5 A.L.R. 30 (1918).

<sup>2</sup> Hollywood Chamber of Commerce v. Railroad Commission of State of California, 192 Cal. 307, 219 P. 983, 30 A.L.R. 68 (1923); State v. Atlantic Coast Line R. Co., 56 Fla. 617, 47 So. 969 (1908).

<sup>3</sup> Chicago, R.I. & P. Ry. Co. v. U.S., 284 U.S. 80, 52 S. Ct. 87, 76 L. Ed. 177 (1931); Atchison, T. & S.F. Ry. Co. v. Railroad Commission of State of California, 283 U.S. 380, 51 S. Ct. 553, 75 L. Ed. 1128 (1931); Norfolk & W. Ry. Co. v. Public Service Commission of West Virginia, 265 U.S. 70, 44 S. Ct. 439, 68 L. Ed. 904 (1924).

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## § 29. Power to regulate private carriers

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### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  1

A state does not have the power to regulate, directly or indirectly, private carriers under the power to regulate common carriers,<sup>1</sup> and intrastate private carriers are not subject to state regulation.<sup>2</sup> A state may not impose upon a private carrier the duties and liabilities of a common carrier, since that would be a taking of private property for public use without compensation and with the denial of due process; for the same reason, a state may not arbitrarily change the status of a private carrier to that of a public carrier.<sup>3</sup> When, however, the right to engage in the transportation business depends on a grant from the state, it is competent for the state in making such a grant to impose the condition that the grantee must exercise that privilege in the capacity of a common carrier.<sup>4</sup> Also, a statute may impose on contract carriers regulations of the nature of those frequently imposed on common carriers so long as it does not require that the contract carrier devote its property to the service of the public.<sup>5</sup> Thus, a statute exempting private carriers from regulation by a state commission does not exempt as private carriage transportation to and from a warehouse for warehouse customers.<sup>6</sup>

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### Footnotes

<sup>1</sup> [Williamson v. Mitchell Auto Co.](#), 181 Ark. 693, 27 S.W.2d 96 (1930).  
As to common carriers, see § 2.

<sup>2</sup> [XL Disposal Corp., Inc. v. Zehnder](#), 304 Ill. App. 3d 202, 237 Ill. Dec. 307, 709 N.E.2d 293 (4th Dist. 1999).  
As to private carriers, see § 3.

<sup>3</sup> [State of Washington ex rel. Stimson Lumber Co. v. Kuykendall](#), 275 U.S. 207, 48 S. Ct. 41, 72 L. Ed. 241 (1927); [City of Bayard v. North Central Gas Co.](#), 164 Neb. 819, 83 N.W.2d 861 (1957); [Motor Haulage Co. v. Maltbie](#), 293 N.Y. 338, 57 N.E.2d 41, 161 A.L.R. 401 (1944); [Equipment Finance Corp. v. Scheidt](#), 249 N.C. 334, 106 S.E.2d 555



(1959); *Affiliated Service Corp. v. Public Utilities Commission of Ohio*, 127 Ohio St. 47, 186 N.E. 703, 103 A.L.R. 264 (1933); *Purple Truck Garage Co. v. Campbell*, 119 Or. 489, 250 P. 213, 51 A.L.R. 816 (1926); *Dairymen's Co-Operative Sales Ass'n v. Public Service Commission of Pennsylvania*, 318 Pa. 381, 177 A. 770, 98 A.L.R. 218 (1935); *State v. Nelson*, 65 Utah 457, 238 P. 237, 42 A.L.R. 849 (1925); *Miles v. Enumclaw Co-op. Creamery Corp.*, 12 Wash. 2d 377, 121 P.2d 945 (1942).

<sup>4</sup> *Pierce Oil Corp. v. Phoenix Refining Co.*, 259 U.S. 125, 42 S. Ct. 440, 66 L. Ed. 855 (1922).

<sup>5</sup> *Deppman v. Murray*, 5 F. Supp. 661 (W.D. Wash. 1934).

<sup>6</sup> *Inland Empire Distribution Systems, Inc. v. Utilities and Transp. Com'n*, 112 Wash. 2d 278, 770 P.2d 624, 87 A.L.R.4th 627 (1989).

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## 13 Am. Jur. 2d Carriers § 30

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## § 30. Validity of regulations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  1

Legislative enactments for the control and regulation of common carriers are subject to constitutional limitations<sup>1</sup> and may not be discriminatory in their operation.<sup>2</sup> In determining whether a rule or regulation promulgated by the legislative authority, in its terms or in its practical operation and effect is unreasonable and denies to the carrier its constitutional property rights, all the facts and circumstances affecting the rights of all the interested parties must be considered,<sup>3</sup> including the requirements of public service, the classification, extent and relation of the subject regulated, and the effect of the burden on the entire business of the carrier.<sup>4</sup>

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### Footnotes

<sup>1</sup> [§ 28.](#)

<sup>2</sup> [§ 31.](#)

<sup>3</sup> [Louisville & N.R. Co. v. Railroad Com'rs](#), 63 Fla. 491, 58 So. 543 (1912).

<sup>4</sup> [State v. Atlantic Coast Line R. Co.](#), 56 Fla. 617, 47 So. 969 (1908).

## 13 Am. Jur. 2d Carriers § 31

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## § 31. Validity of regulations—Classification and discrimination

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### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  1

A state, in classifying persons or corporations and their occupations as common carriers, must adopt a classification which has a just relation to or reasonable basis in the essential differences and circumstances with reference to the subject regulated; all those who are similarly situated or who have similar duties and obligations should be included in one class at least when there is not any practical difference to warrant special classification in the interests of the general welfare.<sup>1</sup>

In determining the legality of classifications of carriers for the purpose of legislative regulation, courts should consider the subject to be regulated; the character, extent, and purpose of the regulation; the classes of persons legally and naturally affected by the regulation; and the particular classification and regulation adopted in the statute at issue.<sup>2</sup> A classification of carriers having a basis in practical convenience is not subject to constitutional challenge on the basis that it lacks purely theoretical or scientific uniformity.<sup>3</sup> Material and substantial differences in operating conditions, in the manner of operation, in the location or length of the line or route operated, or in the character of traffic may constitute a valid basis of classification.<sup>4</sup>

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### Footnotes

<sup>1</sup> [Com. v. Interstate Consol. St. Ry. Co.](#), 187 Mass. 436, 73 N.E. 530 (1905), [aff'd](#), 207 U.S. 79, 28 S. Ct. 26, 52 L. Ed. 111 (1907).

<sup>2</sup> [Continental Baking Co. v. Woodring](#), 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).

<sup>3</sup> [Continental Baking Co. v. Woodring](#), 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).

- <sup>4</sup> [Consumers' League of Colorado v. Colorado & S. Ry. Co., 53 Colo. 54, 125 P. 577 \(1912\); Puget Sound Elec. Ry. v. Railroad Com'n of Washington, 65 Wash. 75, 117 P. 739 \(1911\).](#)

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## 13 Am. Jur. 2d Carriers § 32

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## § 32. Construction of statutes regulating common carriers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  2

Statutes relating to the regulation of common carriers to the extent that they are intended to secure the proper performance of the carriers' public duties and to prevent discrimination are generally regarded as remedial and subject to liberal construction.<sup>1</sup> Regulatory statutes will not be given a construction that would render them invalid if such a construction can reasonably be avoided.<sup>2</sup>

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### Footnotes

<sup>1</sup> [Spiller v. Atchison, T. & S.F. Ry. Co.](#), 253 U.S. 117, 40 S. Ct. 466, 64 L. Ed. 810 (1920); [Consumers' League of Colorado v. Colorado & S. Ry. Co.](#), 53 Colo. 54, 125 P. 577 (1912); [Haselton v. Interstate Stage Lines](#), 82 N.H. 327, 133 A. 451, 47 A.L.R. 218 (1926).

<sup>2</sup> [Schulz v. Parker](#), 158 Iowa 42, 139 N.W. 173 (1912); [Haselton v. Interstate Stage Lines](#), 82 N.H. 327, 133 A. 451, 47 A.L.R. 218 (1926).

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## 13 Am. Jur. 2d Carriers § 33

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## § 33. Common carrier's right to adopt its own regulations

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### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  1

Common carriers have the undoubted right in the discharge of their duties to adopt such reasonable regulations as they may see fit for the proper conduct of their business.<sup>1</sup>

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### Footnotes

<sup>1</sup> Central of Georgia Ry. Co. v. Augusta Brokerage Co., 122 Ga. 646, 50 S.E. 473 (1905); Coeur d'Alene & St. Joe Transp. Co. v. Ferrell, 22 Idaho 752, 128 P. 565 (1912); Vassor v. Atlantic Coast Line R. Co., 142 N.C. 68, 54 S.E. 849 (1906); Campbell v. Milwaukee Electric Ry. & Light Co., 169 Wis. 171, 170 N.W. 937, 6 A.L.R. 628 (1919).

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## 13 Am. Jur. 2d Carriers § 34

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## § 34. Proceedings to enforce or prevent enforcement of regulations

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### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  18(1) to 18(6)

A regulated common carrier is presumed to possess knowledge of all laws and regulations pertaining to its business, including specifically as they relate to the transport of dangerous goods.<sup>1</sup>

In many jurisdictions, to protect itself against unlawful regulations, a carrier may resort to equitable remedies,<sup>2</sup> or it may await proceedings to enforce its compliance with those regulations and then defend on the ground of their invalidity.<sup>3</sup>

Nonprofit and community organizations and unions have associational standing to bring a claim or appeal a decision regarding carriers, where the organization or union is asserting the interests of its members who have standing.<sup>4</sup>

Proceedings for the enforcement of a penalty may be enjoined while a carrier challenges the constitutionality of a state statute,<sup>5</sup> although the court may refuse to grant an injunction on grounds that are available to the carrier as a defense in an action for the enforcement of the penalty.<sup>6</sup>

In proceedings to recover or impose a penalty for a violation of regulatory statutes if the violation is due to an honest mistake, the carrier may not be held responsible,<sup>7</sup> unless the mistake is regarding a fact that the carrier has a duty to know, such as the distance between stations.<sup>8</sup>

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### Footnotes

<sup>1</sup> [State v. United Parcel Service, Inc.](#), 253 F. Supp. 3d 583 (S.D. N.Y. 2017), *aff'd*, 942 F.3d 554 (2d Cir. 2019).

- <sup>2</sup> City of Paducah v. Paducah Ry. Co., 261 U.S. 267, 43 S. Ct. 335, 67 L. Ed. 647 (1923); State of Missouri v. Chicago, B. & Q.R. Co., 241 U.S. 533, 36 S. Ct. 715, 60 L. Ed. 1148 (1916).
- <sup>3</sup> State of Missouri v. Chicago, B. & Q.R. Co., 241 U.S. 533, 36 S. Ct. 715, 60 L. Ed. 1148 (1916).
- <sup>4</sup> Punttenney v. Iowa Utilities Board, 928 N.W.2d 829 (Iowa 2019) (a nonprofit environmental organization representing two of its members appealed the trial court's affirmance of an agency decision approving an underground crude oil pipeline); Samuelsen v. Walder, 88 A.D.3d 587, 932 N.Y.S.2d 30 (1st Dep't 2011) (a subway workers' union and a community action group challenged an agency decision to close subway station token booths and customer assistance kiosks without holding public hearings).
- <sup>5</sup> St. Louis-San Francisco Ry. Co. v. Alabama Public Service Commission, 279 U.S. 560, 49 S. Ct. 383, 73 L. Ed. 843 (1929).
- <sup>6</sup> Hampton v. St. Louis, I.M. & S.R. Co., 227 U.S. 456, 33 S. Ct. 263, 57 L. Ed. 596 (1913).
- <sup>7</sup> U.S. of America v. Northern Pac. Ry. Co., 242 U.S. 190, 37 S. Ct. 22, 61 L. Ed. 240 (1916).
- <sup>8</sup> Chicago, R.I. & P. Ry. Co. v. McDermott, 106 Ark. 170, 152 S.W. 983 (1913).

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## 13 Am. Jur. 2d Carriers § 35

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## § 35. Sovereign power and restriction by Commerce Clause

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### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  1, 2

Under the dual system of federal and state governments, the inherent sovereign power to regulate intrastate transportation by common carriers is reserved to the states.<sup>1</sup> Within the limits of a state constitution, the legislature's authority is supreme with regard to the regulation of intrastate transportation by common carriers unless the regulation in effect deprives a person or corporation of property without due process of law, denies equal protection, directly and materially burdens interstate commerce in violation of the Constitution of the United States, or violates some other provision of federal law.<sup>2</sup>

A state statute that requires that all motor carrier vehicles whether or not registered in the state must be periodically inspected, either under the law of the state or some other state, does not impose an unconstitutional burden on interstate commerce, since the state legislature has a reasonable basis to believe that the inspection of motor carrier vehicles is likely to discover some defective vehicles and that some vehicle defects contribute to accidents.<sup>3</sup> Similarly, a state may impose a gross weight regulatory fee on common and contract carriers without violating the Commerce Clause when the fee is imposed on interstate and intrastate carriers alike and does not force interstate carriers to bear a higher cost per mile than intrastate carriers, where the fee serves the legitimate state interest of funding safety and inspection programs for trucks using state highways, and the fee does not place an excessive burden on interstate commerce.<sup>4</sup> However, a county granting an exclusive franchise to a passenger carrier service for the ground transportation of passengers from an airport to the county in derogation of a preexisting carrier's operations constitutes an unreasonable burden on interstate commerce, since the preexisting carrier's operations are within the stream of interstate commerce, even though they take place wholly within a single state.<sup>5</sup>

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### Footnotes

<sup>1</sup> [Southern Pac. Co. v. State of Ariz.](#), 249 U.S. 472, 39 S. Ct. 313, 63 L. Ed. 713 (1919); [Chicago & N. W. Ry. Co. v.](#)

Ochs, 249 U.S. 416, 39 S. Ct. 343, 63 L. Ed. 679 (1919); *Gulf, C. & S. F. Ry. Co. v. State of Texas*, 246 U.S. 58, 38 S. Ct. 236, 62 L. Ed. 574 (1918).

In determining whether a carrier's operation in hauling goods between points in one state through another state is a subterfuge to evade intrastate regulation, the courts should look to the reasonableness of the carrier's modus operandi, as evidenced by the degree of circuitry involved in the route when compared with the "local" route normally employed by intrastate carriers, the presence or absence of economic or operational justification for such a routing apart from the carrier's lack of intrastate authority and the incidental or dominant character of intrastate traffic as a portion of the carrier's overall operation; no single factor is controlling. *Application of Silvey Refrigerated Carriers, Inc.*, 226 Neb. 668, 414 N.W.2d 248 (1987).

<sup>2</sup> *State v. Jacksonville Terminal Co.*, 96 Fla. 295, 117 So. 869, 59 A.L.R. 324 (1928); *Railroad Commission of Georgia v. Louisville & N. R. Co.*, 140 Ga. 817, 80 S.E. 327 (1913); *Michigan Cent. R. Co. v. Michigan Railroad Commission*, 183 Mich. 6, 148 N.W. 800 (1914); *Range Sand Line Brick Co. v. Great Northern Ry. Co.*, 137 Minn. 314, 163 N.W. 656 (1917); *Davison v. Chicago & N.W. Ry. Co.*, 100 Neb. 462, 160 N.W. 877 (1916); *Chicago, R.I. & P. Ry. Co. v. State*, 1917 OK 471, 67 Okla. 10, 168 P. 239 (1917).

Because a common carrier performs a public transportation service, the legislature can grant it the sovereign power to take private property for a public use, and the state can control its operations, to the extent that such regulation is not precluded by federal law. *Thompson v. Heineman*, 289 Neb. 798, 857 N.W.2d 731 (2015).

As to preemption of state regulation of rail carriers, see § 46, and of motor carriers and freight forwarders, see § 88.

As to the validity of state regulations that directly, indirectly, or incidentally burden commerce, see *Am. Jur. 2d, Commerce* §§ 35 to 41.

<sup>3</sup> *American Trucking Associations, Inc. v. Larson*, 683 F.2d 787 (3d Cir. 1982).

<sup>4</sup> *Franks & Son, Inc. v. State*, 136 Wash. 2d 737, 966 P.2d 1232 (1998).

<sup>5</sup> *Charter Limousine, Inc. v. Dade County Bd. of County Com'rs*, 678 F.2d 586 (5th Cir. 1982).

## 13 Am. Jur. 2d Carriers § 36

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### Carriers

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### Part One. In General

#### III. Regulation and Control of Carrier's Operations

##### B. State Regulation

## § 36. Tax discrimination against carriers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  1, 2

Federal law restricts states and their subdivisions and authorities working for them from certain discriminatory practices in assessing, levying, or collecting a tax on rail<sup>1</sup> and motor carrier<sup>2</sup> transportation property.

A district court of the United States has jurisdiction, concurrent with the courts of the United States and the states, to prevent prohibited acts.<sup>3</sup> Relief may be granted only if the ratio of assessed value to true market value of the carrier's property exceeds by at least 5% the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction.<sup>4</sup> The burden of proof in determining the assessed value and the true market value is governed by state law.<sup>5</sup> Provision is also made for cases where the ratio cannot be determined to the court's satisfaction through the random-sampling method known as a sales assessment ratio study.<sup>6</sup>

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### Footnotes

- <sup>1</sup> 49 U.S.C.A. § 11501(b).  
As to prohibited discriminatory assessments against railroads, see [Am. Jur. 2d, State and Local Taxation §§ 319 to 322](#).
- <sup>2</sup> 49 U.S.C.A. § 14502(b).
- <sup>3</sup> 49 U.S.C.A. §§ 11501(c), 14502(c)(1).
- <sup>4</sup> 49 U.S.C.A. §§ 11501(c), 14502(c)(2).

<sup>5</sup> 49 U.S.C.A. §§ 11501(c), 14502(c)(3).

<sup>6</sup> 49 U.S.C.A. §§ 11501(c), 14502(c)(4).

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### B. State Regulation

## § 37. State and local income tax on employees' income

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  1, 2

No part of the compensation (1) paid by a rail carrier providing transportation subject to the jurisdiction of the Federal Surface Transportation Board to an employee who performs regularly assigned duties on a railroad in more than one state,<sup>1</sup> or (2) paid by a motor carrier providing interstate transportation subject to federal jurisdiction or by a motor private carrier to an employee who performs regularly assigned duties in two or more states, as such an employee with respect to a motor vehicle<sup>2</sup> may be subject to the income tax laws of any state or subdivision of that state other than the state or subdivision of the employee's residence.

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 11502(a).

<sup>2</sup> 49 U.S.C.A. § 14503(a)(1).

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## 13 Am. Jur. 2d Carriers § 38

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### Part One. In General

#### III. Regulation and Control of Carrier's Operations

##### B. State Regulation

## § 38. Delegation to administrative bodies

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  1, 10

The power to regulate common carriers is generally delegated to commissions and other administrative bodies created for that purpose,<sup>1</sup> and as a general matter, this does not violate a constitutional prohibition against the delegation of legislative power.<sup>2</sup>

Some states' constitutions authorize a designated state administrative agency to exercise its plenary powers over common carriers, and absent specific legislation, such powers are absolute and unqualified.<sup>3</sup> However, the legislature can divest this administrative agency of jurisdiction over a class of common carriers by passing specific legislation that occupies a regulatory field, thereby preempting the agency's control.<sup>4</sup> The legislature divests this agency of its power by specifically restricting the agency's authority and retaining control itself over that class of common carriers.<sup>5</sup> With this understanding, it has been held that statutes treating pipeline carriers that transport oil for hire in intrastate commerce as common carriers subject to the agency's regulation and allowing common carriers to construct such pipelines are not "specific legislation" to restrict the agency's regulatory powers over interstate carriers.<sup>6</sup>

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### Footnotes

<sup>1</sup> Atchison, T. & S.F. Ry. Co. v. Railroad Commission of State of California, 283 U.S. 380, 51 S. Ct. 553, 75 L. Ed. 1128 (1931); State v. Jacksonville Terminal Co., 96 Fla. 295, 117 So. 869, 59 A.L.R. 324 (1928); Columbus & Greenville Ry. Co. v. Scales, 578 So. 2d 275 (Miss. 1991); Seward v. Denver & R. G. R. Co., 1913-NMSC-019, 17 N.M. 557, 131 P. 980 (1913); St. Clair Borough v. Tamaqua & Pottsville Electric Ry. Co., 259 Pa. 462, 103 A. 287, 5 A.L.R. 20 (1918); Occidental Chemical Corp. v. ETC NGL Transport, LLC, 425 S.W.3d 354 (Tex. App. Houston 1st Dist. 2011) (recognition of the delegation of regulation of common carrier oil and gas pipelines to the Texas Railroad Commission).

<sup>2</sup> U.S. v. Illinois Cent. R. Co., 291 U.S. 457, 54 S. Ct. 471, 78 L. Ed. 909 (1934); State v. Atlantic Coast Line R. Co., 56 Fla. 617, 47 So. 969 (1908); Hammond Lumber Co. v. Public Service Commission, 96 Or. 595, 189 P. 639, 9 A.L.R. 1223 (1920); St. Clair Borough v. Tamaqua & Pottsville Electric Ry. Co., 259 Pa. 462, 103 A. 287, 5 A.L.R. 20 (1918); State ex rel. Public Service Commission v. Baltimore & O. R. Co., 76 W. Va. 399, 85 S.E. 714 (1915).

<sup>3</sup> Thompson v. Heineman, 289 Neb. 798, 857 N.W.2d 731 (2015) (state Public Service Commission).

<sup>4</sup> Thompson v. Heineman, 289 Neb. 798, 857 N.W.2d 731 (2015).

<sup>5</sup> Thompson v. Heineman, 289 Neb. 798, 857 N.W.2d 731 (2015).

<sup>6</sup> Thompson v. Heineman, 289 Neb. 798, 857 N.W.2d 731 (2015).

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### B. State Regulation

## § 39. Records and reports

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  9

A municipal corporation may require that the owners of public moving vans file a report of the persons for whom they moved household goods and the places to and from which the goods were taken.<sup>1</sup> On the other hand, an ordinance requiring that movers file records of the destination of household goods moved by them is not reasonable where the required information does not have a relation to any purpose of regulating that business.<sup>2</sup>

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### Footnotes

<sup>1</sup> [Lawson v. Connolly](#), 175 Mich. 375, 141 N.W. 623 (1913); [Wagner v. City of St. Louis](#), 284 Mo. 410, 224 S.W. 413, 12 A.L.R. 495 (1920).

<sup>2</sup> [City of Chicago v. Hebard Express & Van Co.](#), 301 Ill. 570, 134 N.E. 27, 20 A.L.R. 206 (1922).

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## 13 Am. Jur. 2d Carriers § 40

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### Part One. In General

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### B. State Regulation

## § 40. Validity of penalties

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  1, 10

Penalties assessed for violations of regulations relating to common carriers that are properly proportioned to the offense are lawful.<sup>1</sup> However, a law is invalid on its face when the penalties for disobedience are so severe as to intimidate the carrier and its officers from resorting to the courts to test the validity of the legislation,<sup>2</sup> but the rule is otherwise when a fair opportunity to make such a court test is afforded.<sup>3</sup>

The provisions of state statutes imposing penalties for the violation of regulations as applied to interstate traffic are generally regarded as not constituting an unlawful interference with interstate commerce and are therefore generally upheld to the extent that they are not in conflict with or superseded by federal legislation on the subject.<sup>4</sup>

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### Footnotes

<sup>1</sup> [Atlantic Coast Line R. Co. v. Coachman](#), 59 Fla. 130, 52 So. 377 (1910); [Alexander v. Chicago, M. & St. P.R. Co.](#), 282 Mo. 236, 221 S.W. 712, 11 A.L.R. 867 (1920).

<sup>2</sup> [St. Louis, I.M. & S. Ry. Co. v. Williams](#), 251 U.S. 63, 40 S. Ct. 71, 64 L. Ed. 139 (1919); [Missouri Pac. R. Co. v. Tucker](#), 230 U.S. 340, 33 S. Ct. 961, 57 L. Ed. 1507 (1913); [State v. Crawford](#), 74 Wash. 248, 133 P. 590 (1913).

<sup>3</sup> [Chesapeake & O.R. Co. v. Conley](#), 230 U.S. 513, 33 S. Ct. 985, 57 L. Ed. 1597 (1913).

<sup>4</sup> [Atlantic Coast Line R. Co. v. Mazursky](#), 216 U.S. 122, 30 S. Ct. 378, 54 L. Ed. 411 (1910).

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## Research References

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  1, 9 to 11, 17 to 20(1), 21(1), 22 to 24, 26, 29, 33 to 37(1), 38(1), 38(8)

### A.L.R. Library

A.L.R. Index, Carriers

A.L.R. Index, Interstate Commerce Commission

A.L.R. Index, Transportation

West's A.L.R. Digest, [Carriers](#)  1, 9 to 11, 17 to 20(1), 21(1), 22 to 24, 26, 29, 33 to 37(1), 38(1), 38(8)

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## 13 Am. Jur. 2d Carriers § 41

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 1. Overview

## § 41. Power of Congress to govern interstate transportation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  1, 23

Under the power of the federal government to regulate commerce,<sup>1</sup> carriers engaged in interstate commerce are subject to its exclusive regulation and control.<sup>2</sup>

Congress has enacted legislation governing interstate transportation<sup>3</sup> and established the Surface Transportation Board to administer this legislation.<sup>4</sup> Upon application and subject to certain conditions, the Secretary of Transportation must register an employer or person subject to the commercial motor vehicle safety statutes. An employer or person may operate a commercial motor vehicle in interstate commerce only if the employer or person is registered by the Secretary and receives a USDOT number.<sup>5</sup> Furthermore, Congress has enacted legislation making it an offense to operate or direct the operation of a common carrier while under the influence of alcohol or drugs,<sup>6</sup> as well as legislation requiring that motor carriers test the operators of commercial motor vehicles for their use of controlled substances and alcohol.<sup>7</sup>

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### Footnotes

<sup>1</sup> U.S. Const. Art. I, § 8.

<sup>2</sup> [Houston, E. & W.T.R. Co. v. U.S.](#), 234 U.S. 342, 34 S. Ct. 833, 58 L. Ed. 1341 (1914).

<sup>3</sup> 49 U.S.C.A. §§ 10101 to 16106.

<sup>4</sup> § 42.

<sup>5</sup> 49 U.S.C.A. § 31134(a).

<sup>6</sup> 18 U.S.C.A. §§ 341 to 343.

<sup>7</sup> 49 U.S.C.A. § 31306.

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## 13 Am. Jur. 2d Carriers § 42

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 2. Surface Transportation Board

## § 42. Establishment of STB

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 23

The Surface Transportation Board (STB) is an independent establishment of the United States government.<sup>1</sup> The Board is charged with implementing the specific provisions of the United States Code governing Board actions<sup>2</sup> and provisions regarding interstate transportation by rail, motor, water, and pipeline carriers.<sup>3</sup> The statute specifies the membership of the Board<sup>4</sup> and the designation and powers of the chairman.<sup>5</sup> The Board may prescribe regulations in carrying out those provisions<sup>6</sup> and has certain investigative powers.<sup>7</sup>

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### Footnotes

- <sup>1</sup> 49 U.S.C.A. § 1301(a).
- <sup>2</sup> 49 U.S.C.A. § 1321(a) (referring to 49 U.S.C.A. §§ 1301 to 1326).
- <sup>3</sup> 49 U.S.C.A. § 1321(a) (referring to 49 U.S.C.A. §§ 10101 to 16106).
- <sup>4</sup> 49 U.S.C.A. § 1301(b).
- <sup>5</sup> 49 U.S.C.A. § 1301(c).
- <sup>6</sup> 49 U.S.C.A. § 1321(a).
- <sup>7</sup> 49 U.S.C.A. § 1321(b).

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## 13 Am. Jur. 2d Carriers § 43

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### Part One. In General

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### C. Federal Regulation

### 2. Surface Transportation Board

## § 43. Judicial review of STB determinations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  34

### Law Reviews and Other Periodicals

Warren, [Judicial Review of Surface Transportation Board Decisions: An Empirical Analysis](#), 45 Transp. L.J. 1 (2018)

For an order of the Surface Transportation Board (STB) to be final as required for a court of appeals to acquire jurisdiction, it may not be tentative or interlocutory in nature and must be an action in which rights or obligations have been determined or from which legal consequences will flow.<sup>1</sup>

A reviewing court will sustain an order of the Board so long as there is substantial evidence to support it,<sup>2</sup> and it is not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.<sup>3</sup> The court of appeals cannot call a Board decision arbitrary and capricious if the record reflects a rational basis for the decision.<sup>4</sup> The court must determine whether the factual findings of the Board are supported by substantial evidence in the record as a whole, accepting the reasonable inferences the Board drew therefrom.<sup>5</sup>

Judicial review is deferential,<sup>6</sup> and the court is obliged to give considerable deference to the Board's interpretation of the statutes and regulations it administers.<sup>7</sup> Deference to the Board is particularly high in rate disputes, where the Board acts at the zenith of its powers.<sup>8</sup> When reviewing the Board's decisions, the court only asks whether they are based on a permissible construction of the statute.<sup>9</sup> The court must thoroughly examine the record and inquire whether the Board correctly applied

the proper legal standards, and the court is obligated to overturn the Board's decisions if there are compelling indications that those interpretations were incorrect.<sup>10</sup>

A policy judgment may not be disturbed on judicial review of the Board's rulemaking where that judgment falls within the Board's expertise after balancing costs and benefits.<sup>11</sup> On review of an administrative adjudication, a court will not disturb the Board's judgment when its findings rest on such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and the Board has articulated a rational connection between the facts found and its decision.<sup>12</sup>

A court will not address the merits of an argument that was not presented to the Board.<sup>13</sup>

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#### Footnotes

- <sup>1</sup> [Union Pacific R.R. Co. v. Surface Transp. Bd.](#), 358 F.3d 31 (D.C. Cir. 2004).  
The Board's alleged adoption of a new methodology, during the course of an ongoing adjudication of a rate complaint, for assessing market dominance without first going through notice and comment rulemaking was not a final order subject to judicial review. [CSX Transp., Inc. v. Surface Transp. Bd.](#), 774 F.3d 25 (D.C. Cir. 2014).
- <sup>2</sup> [Del Grosso v. Surface Transportation Board](#), 898 F.3d 139 (1st Cir. 2018); [Allied Erecting and Dismantling Co., Inc. v. Surface Transportation Board](#), 835 F.3d 548 (6th Cir. 2016), cert. denied, 137 S. Ct. 1582, 197 L. Ed. 2d 706 (2017); [Decatur County Com'rs v. Surface Transp. Bd.](#), 308 F.3d 710 (7th Cir. 2002); [Union Pacific R. Co. v. Surface Transp. Bd.](#), 628 F.3d 597 (D.C. Cir. 2010).
- <sup>3</sup> [Del Grosso v. Surface Transportation Board](#), 898 F.3d 139 (1st Cir. 2018); [Allied Erecting and Dismantling Co., Inc. v. Surface Transportation Board](#), 835 F.3d 548 (6th Cir. 2016), cert. denied, 137 S. Ct. 1582, 197 L. Ed. 2d 706 (2017); [Union Pacific R. Co. v. Surface Transp. Bd.](#), 628 F.3d 597 (D.C. Cir. 2010).
- <sup>4</sup> [Del Grosso v. Surface Transportation Board](#), 898 F.3d 139 (1st Cir. 2018); [Union Pacific R. Co. v. Surface Transp. Bd.](#), 628 F.3d 597 (D.C. Cir. 2010).
- <sup>5</sup> [Tubbs v. Surface Transp. Bd.](#), 812 F.3d 1141 (8th Cir. 2015).
- <sup>6</sup> [Erie-Niagara Rail Steering Committee v. Surface Transp. Bd.](#), 247 F.3d 437 (2d Cir. 2001); [Union Pacific R. Co. v. Surface Transp. Bd.](#), 628 F.3d 597 (D.C. Cir. 2010).
- <sup>7</sup> [United Transp. Union-Illinois Legislative Bd. v. Surface Transp. Bd.](#), 183 F.3d 606 (7th Cir. 1999); [GS Roofing Products Co. v. Surface Transp. Bd.](#), 143 F.3d 387 (8th Cir. 1998); [BNSF Railway Company v. California Department of Tax and Fee Administration](#), 904 F.3d 755 (9th Cir. 2018) (the scope of preemption under the Interstate Commerce Commission Termination Act (ICCTA)).
- <sup>8</sup> [Union Pacific R. Co. v. Surface Transp. Bd.](#), 628 F.3d 597 (D.C. Cir. 2010) (mathematical certainty in a rate-making dispute is not required).
- <sup>9</sup> [Tubbs v. Surface Transp. Bd.](#), 812 F.3d 1141 (8th Cir. 2015).
- <sup>10</sup> [MidAmerican Energy Co. v. Surface Transp. Bd.](#), 169 F.3d 1099 (8th Cir. 1999).
- <sup>11</sup> [BNSF Ry. Co. v. Surface Transp. Bd.](#), 526 F.3d 770 (D.C. Cir. 2008).
- <sup>12</sup> [Union Pacific R. Co. v. Surface Transp. Bd.](#), 628 F.3d 597 (D.C. Cir. 2010).
- <sup>13</sup> [Erie-Niagara Rail Steering Committee v. Surface Transp. Bd.](#), 247 F.3d 437 (2d Cir. 2001); [BNSF Ry. Co. v. Surface Transp. Bd.](#), 526 F.3d 770 (D.C. Cir. 2008).  
As to the primary jurisdiction doctrine, where the STB is required to address certain issues in the first instance, see § 47.

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## 13 Am. Jur. 2d Carriers § 44

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### Carriers

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 2. Surface Transportation Board

## § 44. Judicial review of STB determinations—Parties

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  34

Petitions for review of the decisions of the Surface Transportation Board (STB) may only be filed by parties to the proceedings before the Board,<sup>1</sup> and this rule applies to nonparty petitions challenging the Board's authority to render the decision in question.<sup>2</sup>

In some circumstances, court of appeals may reach the merits even prior to resolving a question of statutory or prudential standing, and that issue may be waived if the Board does not raise it.<sup>3</sup>

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### Footnotes

<sup>1</sup> [Erie-Niagara Rail Steering Committee v. Surface Transp. Bd.](#), 167 F.3d 111 (2d Cir. 1999); [Kessler v. Surface Transp. Bd.](#), 637 F.3d 369 (D.C. Cir. 2011).

<sup>2</sup> [Erie-Niagara Rail Steering Committee v. Surface Transp. Bd.](#), 167 F.3d 111 (2d Cir. 1999).

<sup>3</sup> [United Transp. Union-Illinois Legislative Bd. v. Surface Transp. Bd.](#), 183 F.3d 606 (7th Cir. 1999).



## 13 Am. Jur. 2d Carriers § 45

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### Carriers

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### a. Surface Transportation Board's Jurisdiction

## § 45. Scope of STB jurisdiction

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  24

The Surface Transportation Board has jurisdiction over transportation by rail carrier that is (1) only by railroad, or (2) by railroad and water when the transportation is under common control, management, or arrangement for a continuous carriage or shipment.<sup>1</sup> However, that jurisdiction applies only to transportation in the United States between a place in:<sup>2</sup>

- (1) a state and a place in the same or another state as part of the interstate rail network;
- (2) a state and a place in a territory or possession of the United States;
- (3) a territory or possession of the United States and a place in another territory or possession;
- (4) a territory or possession of the United States and another place in the same territory or possession;
- (5) the United States and another place in the United States through a foreign country; or
- (6) the United States and a place in a foreign country.

As used in the statute, "rail carrier" means a person providing common carrier railroad transportation for compensation but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation.<sup>3</sup>

Footnotes

<sup>1</sup> 49 U.S.C.A. § 10501(a)(1).

<sup>2</sup> 49 U.S.C.A. § 10501(a)(2).

<sup>3</sup> 49 U.S.C.A. § 10102(5).

A company that marketed and sold vacations aboard vintage railcars provided “railroad transportation” within the jurisdiction of the Surface Transportation Board over rail carriers, as defined above. [American Orient Exp. Ry. Co., LLC v. Surface Transp. Bd.](#), 484 F.3d 554 (D.C. Cir. 2007).

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## 13 Am. Jur. 2d Carriers § 46

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### Carriers

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### a. Surface Transportation Board's Jurisdiction

## § 46. Exclusiveness of STB jurisdiction

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 24

### A.L.R. Library

Preemptive Effect of Interstate Commerce Commission Termination Act (ICCTA), Pub. L. No. 104-88, 109 Stat. 803—[Railroads](#), 2 A.L.R. Fed. 3d Art. 3

The jurisdiction of the Surface Transportation Board (STB) over transportation by rail carriers and the remedies provided by statute with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers is exclusive.<sup>1</sup> Additionally, the jurisdiction of the Board over the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one state, is exclusive.<sup>2</sup>

State-owned rail lines, like private ones, are preempted from state regulation and must comply with the STB's provisions.<sup>3</sup> The basis for preemption is solely the language of the statute and is not at the discretion of the Board.<sup>4</sup> This preemption provision grants the Board exclusive jurisdiction over a wide range of state and local regulation of rail activity,<sup>5</sup> and it has been stated that it is difficult to imagine a broader statement of Congress's intent to preempt state regulatory authority over railroad operations.<sup>6</sup> State actions regarding these statutorily preempted areas constitute per se unreasonable interference with interstate commerce.<sup>7</sup> Preemption is not limited to explicit economic regulation by a state; rather, whether a state regulation is



permissible depends on whether it does not impose an unreasonable burden on nor discriminate against rail carriage.<sup>8</sup>

The exclusive jurisdiction provision preempts the power of state public service commissions to rule on requests relating to facilities operated by railroads.<sup>9</sup> However, preemption does not apply to facilities that do not involve transportation by rail carrier as defined by statute,<sup>10</sup> and thus, state environmental regulations are not preempted as applied to a solid waste disposal facility,<sup>11</sup> nor are a city's zoning and licensing ordinances preempted as applied against a lessee of railway property that is operating an aggregate distribution center.<sup>12</sup>

State tort claims against a railroad for ceasing rail service over a spur or industrial track are also preempted.<sup>13</sup>

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#### Footnotes

- <sup>1</sup> 49 U.S.C.A. § 10501(b)(1).  
In considering an application for approval of a transaction subject to its jurisdiction, the Surface Transportation Board has exclusive authority to resolve objections to the application. *Norfolk and Western Ry. Co. v. Brotherhood of R.R. Signalmen*, 164 F.3d 847 (4th Cir. 1998).  
As to damages and penalties for rail carriers, see §§ 74 to 83.
- <sup>2</sup> 49 U.S.C.A. § 10501(b)(2).  
The statute provides the Board with exclusive jurisdiction over all physical instrumentalities possessed and all services provided by rail carriers that are related to the movement of passengers and/or property. *Girard v. Youngstown Belt Ry. Co.*, 134 Ohio St. 3d 79, 2012-Ohio-5370, 979 N.E.2d 1273 (2012).
- <sup>3</sup> *Friends of the Eel River v. North Coast Railroad Authority*, 3 Cal. 5th 677, 220 Cal. Rptr. 3d 812, 399 P.3d 37 (Cal. 2017), cert. denied, 138 S. Ct. 1696, 200 L. Ed. 2d 952 (2018).
- <sup>4</sup> *Town of Atherton v. California High-Speed Rail Authority*, 228 Cal. App. 4th 314, 175 Cal. Rptr. 3d 145 (3d Dist. 2014).
- <sup>5</sup> *BNSF Railway Company v. California Department of Tax and Fee Administration*, 904 F.3d 755 (9th Cir. 2018).
- <sup>6</sup> *BNSF Railway Company v. California Department of Tax and Fee Administration*, 904 F.3d 755 (9th Cir. 2018).
- <sup>7</sup> *Friends of the Eel River v. North Coast Railroad Authority*, 3 Cal. 5th 677, 220 Cal. Rptr. 3d 812, 399 P.3d 37 (Cal. 2017), cert. denied, 138 S. Ct. 1696, 200 L. Ed. 2d 952 (2018).
- <sup>8</sup> *New York Susquehanna and Western Ry. Corp. v. Jackson*, 500 F.3d 238 (3d Cir. 2007).  
As to the constitutional limits of regulating carriers, generally, see § 28.
- <sup>9</sup> *Burlington Northern Santa Fe Corp. v. Anderson*, 959 F. Supp. 1288 (D. Mont. 1997); *Georgia Public Service Com'n v. CSX Transp., Inc.*, 225 Ga. App. 787, 484 S.E.2d 799 (1997).
- <sup>10</sup> § 45.
- <sup>11</sup> *Hi Tech Trans, LLC v. New Jersey*, 382 F.3d 295 (3d Cir. 2004).
- <sup>12</sup> *Florida East Coast Ry. Co. v. City of West Palm Beach*, 266 F.3d 1324 (11th Cir. 2001).
- <sup>13</sup> *Port City Properties v. Union Pacific R. Co.*, 518 F.3d 1186 (10th Cir. 2008).

## 13 Am. Jur. 2d Carriers § 47

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### Carriers

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### a. Surface Transportation Board's Jurisdiction

## § 47. Primary jurisdiction doctrine

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 24

Notwithstanding the provision that the jurisdiction of the Surface Transportation Board (STB) over transportation by rail carriers is exclusive,<sup>1</sup> the provision that a person may file a complaint with the Board or bring a civil action to enforce liability against a rail carrier<sup>2</sup> provides for concurrent jurisdiction of the Board and the district courts, and therefore, the thrust of the exclusivity provision is to federalize certain disputes.<sup>3</sup> Nonetheless, where the Board is in a better position than the district court to address a particular issue, the district court must apply the primary jurisdiction doctrine and hold that the Board should have addressed the dispute in the first instance, where the issue is one within the Board's statutory responsibilities, the Board has expertise in the industry and can evaluate the economics and technology of the regulated industry, and the Board can, unlike the district court, solicit comments from all interested parties and the Department of Transportation to address the issue from a more uniform perspective.<sup>4</sup> However, denying a motion to refer a matter to the Board pursuant to the primary jurisdiction doctrine is not an abuse of discretion where the motion was not filed until after the court had rendered judgment on the issue, and the Board's expertise, while helpful, would not have been crucial.<sup>5</sup>

The primary jurisdiction doctrine also requires the dismissal of a suit where the Board had primary jurisdiction over a shipper's claim that a railroad's distribution of rail cars violated federal rail statutes and its tariff,<sup>6</sup> and where the Board had primary jurisdiction to determine what duties were actually imposed by its orders, and to what extent damages were available.<sup>7</sup> Federal courts will refer disputes regarding tariff construction to the Board if the interpretation of a disputed term or phrase implicates larger issues of transportation policy that demand uniform administration by an expert body.<sup>8</sup>

Footnotes

<sup>1</sup> § 46.

<sup>2</sup> § 74.

<sup>3</sup> *Pejepscot Indus. Park, Inc. v. Maine Cent. R. Co.*, 215 F.3d 195 (1st Cir. 2000).

<sup>4</sup> *Chlorine Institute, Inc. v. Soo Line R.R.*, 792 F.3d 903 (8th Cir. 2015) (the issue was whether a railroad company requirement that all toxic inhalation hazards be transported in normalized steel rail cars was a reasonable addition to the minimum regulations set by the Pipeline and Hazardous Materials Safety Administration).

<sup>5</sup> *CSX Transp. Co. v. Novolog Bucks County*, 502 F.3d 247 (3d Cir. 2007), as amended, (Sept. 14, 2007).

<sup>6</sup> *DeBruce Grain, Inc. v. Union Pacific R. Co.*, 149 F.3d 787 (8th Cir. 1998).

<sup>7</sup> *Rymes Heating Oils, Inc. v. Springfield Terminal R. Co.*, 358 F.3d 82 (1st Cir. 2004).

<sup>8</sup> *DeBruce Grain, Inc. v. Union Pacific R. Co.*, 983 F. Supp. 1280 (W.D. Mo. 1997), *aff'd*, 149 F.3d 787 (8th Cir. 1998).

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## 13 Am. Jur. 2d Carriers § 48

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### Part One. In General

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### C. Federal Regulation

### 3. Regulation of Rail Carriers

### a. Surface Transportation Board's Jurisdiction

## § 48. Jurisdiction over rail service provided by local government authorities

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 24

The Surface Transportation Board does not have jurisdiction over public transportation provided by a local governmental authority<sup>1</sup> or a solid waste rail transfer facility, with some exceptions provided by statute.<sup>2</sup> Notwithstanding the above, a local governmental authority remains subject to applicable federal laws related to safety; the representation of employees for collective bargaining; and employment, retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers.<sup>3</sup> Also, the Board has jurisdiction over the use of terminal facilities<sup>4</sup> and switch connections and tracks<sup>5</sup> by a local government authority only if the Board finds that the government authority meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission that were in effect immediately before January 1, 1996.<sup>6</sup> The statute also does not expand nor contract coverage of employees and employers by the Railway Labor Act, the Railroad Retirement Act of 1974, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act.<sup>7</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 10501(c)(2)(A).

<sup>2</sup> 49 U.S.C.A. § 10501(c)(2)(B).

<sup>3</sup> 49 U.S.C.A. § 10501(c)(3)(A).

4            § 57.

5            § 58.

6            49 U.S.C.A. § 10501(c)(3)(B).

7            49 U.S.C.A. § 10501(c)(3)(B).

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## 13 Am. Jur. 2d Carriers § 49

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

#### C. Federal Regulation

#### 3. Regulation of Rail Carriers

#### b. Regulation, Accounting, and Reporting

## § 49. Accounting systems

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  9

The Surface Transportation Board may prescribe a uniform accounting system for classes of rail carriers providing transportation subject to the Board's jurisdiction, which, to the maximum extent practicable, must conform to generally accepted accounting principles.<sup>1</sup> Provision is also made for rules for charging depreciation<sup>2</sup> and cost accounting systems.<sup>3</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 11142.

<sup>2</sup> 49 U.S.C.A. § 11143.

<sup>3</sup> 49 U.S.C.A. § 11162.

## 13 Am. Jur. 2d Carriers § 50

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### b. Regulation, Accounting, and Reporting

## § 50. Records and reports; inspections

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  9

The Surface Transportation Board has the authority to prescribe the form of required records<sup>1</sup> and to inspect and examine the lands, buildings, and equipment of a rail carrier or lessor,<sup>2</sup> and inspect and copy records.<sup>3</sup>

The Board may prescribe the period during which operating, accounting, and financial records must be preserved by rail carriers, lessors, and persons furnishing cars.<sup>4</sup> The Board may also require answers to questions asked by it.<sup>5</sup> An annual report must contain an account in as much detail as the Board may require of the affairs of the rail carrier, lessor, or association for the 12-month period ending on December 31 of each year.<sup>6</sup> The annual report and, if the Board requires, any other report must be made under oath.<sup>7</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 11144(a).

<sup>2</sup> 49 U.S.C.A. § 11144(b)(1).

<sup>3</sup> 49 U.S.C.A. § 11144(b)(2).

<sup>4</sup> 49 U.S.C.A. § 11144(c).

- <sup>5</sup> 49 U.S.C.A. § 11145(a).
- <sup>6</sup> 49 U.S.C.A. § 11145(b)(1).
- <sup>7</sup> 49 U.S.C.A. § 11145(b)(2).

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## 13 Am. Jur. 2d Carriers § 51

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### b. Regulation, Accounting, and Reporting

## § 51. Filing of security interests

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  11

Various instruments evidencing a security interest in railroad rolling stock or accessories intended for a use related to interstate commerce must be filed with the Surface Transportation Board to perfect the security interest, as well as related instruments, including assignments, amendments, releases, discharges, or satisfactions of any part of the interest. Those documents must be in writing, executed by the parties to it, and acknowledged or verified in accordance with Board regulations. When filed in accordance with these requirements, the document is notice to and enforceable against all persons and need not be filed or recorded under another law.<sup>1</sup>

A railroad is subject to these requirements, even though it is temporarily isolated from the rest of the national rail network, since the statute described above only requires that rolling stock be intended for a use related to interstate commerce.<sup>2</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 11301(a).

<sup>2</sup> In re California Western R.R., Inc., 303 B.R. 201 (Bankr. N.D. Cal. 2003).

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Works.

## 13 Am. Jur. 2d Carriers § 52

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### b. Regulation, Accounting, and Reporting

## § 52. Exemptions from STB regulations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 24

In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Surface Transportation Board (STB),<sup>1</sup> the Board must, to the maximum extent consistent with the applicable statutes, exempt a person, class of persons, or a transaction or service whenever the Board finds that:<sup>2</sup>

- (1) the application of a regulation is not necessary to fulfill the federal transportation policy concerning rail carriers, and
- (2) either:

- (a) the transaction or service is of limited scope, or

- (b) the application of the regulation in whole or in part is not needed to protect shippers from the abuse of market power. The Board may, when appropriate, begin an exemption proceeding on its own initiative or on an application by the Secretary of Transportation or an interested party. Within 90 days after receipt of the application the Board must determine whether to begin an appropriate proceeding. If the Board decides not to begin a class exemption proceeding, the reasons for the decision must be published in the Federal Register. Any proceeding begun as a result of an application must be completed within nine months after it is begun.<sup>3</sup>

The Board may specify the period during which an exemption is effective<sup>4</sup> and may revoke an exemption when it finds that application of the regulation is necessary to implement federal transportation policy.<sup>5</sup> The Board may also exercise its authority to exempt transportation that is provided by a rail carrier as part of a continuous intermodal movement.<sup>6</sup>

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Footnotes

- <sup>1</sup> As to Board jurisdiction, generally, see §§ [45](#) to [48](#).
- <sup>2</sup> [49 U.S.C.A. § 10502\(a\)](#).
- <sup>3</sup> [49 U.S.C.A. § 10502\(b\)](#).
- <sup>4</sup> [49 U.S.C.A. § 10502\(c\)](#).
- <sup>5</sup> [49 U.S.C.A. § 10502\(d\)](#) (specifying the procedures for revoking an exemption).
- <sup>6</sup> [49 U.S.C.A. § 10502\(f\)](#).

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## 13 Am. Jur. 2d Carriers § 53

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### b. Regulation, Accounting, and Reporting

## § 53. Exemptions from STB regulations—Limitations on exemption orders

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 24

No exemption order issued by the Surface Transportation Board (STB)<sup>1</sup> can operate to relieve any rail carrier from an obligation to provide contractual terms for liability and claims which are consistent with the statute regulating the liability of rail carriers under receipts and bills of lading.<sup>2</sup> However, rail carriers will not be prevented from offering alternative terms, nor does the Board have the authority to require any specific level of rates or services based upon the statute regulating the liability of rail carriers under receipts and bills of lading.<sup>3</sup>

The Board may not exercise its exemption authority to relieve a rail carrier of its obligation to protect the interests of employees as required by the applicable statutes.<sup>4</sup>

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### Footnotes

<sup>1</sup> As to exemption proceedings, see § 52.

<sup>2</sup> 49 U.S.C.A. § 10502(e).  
As to the liability of carriers under receipts and bills of lading, see §§ 75, 76.

<sup>3</sup> 49 U.S.C.A. § 10502(e).

<sup>4</sup> 49 U.S.C.A. § 10502(g).

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## 13 Am. Jur. 2d Carriers § 54

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### c. Particular Authority of Surface Transportation Board

### (1) In General

## § 54. Authorizing construction and operation of railroad lines

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 24

A person seeking to construct an extension to a railroad line, construct an additional railroad line, provide transportation over or by means of an extended or additional railroad line, or in the case of a person other than a rail carrier, acquire a railroad line or acquire or operate an extended or additional railroad line must obtain a certificate authorizing that activity from the Surface Transportation Board.<sup>1</sup> A proceeding to grant such authority begins when an application is filed.<sup>2</sup> Upon receiving the application, the Board must give reasonable public notice, including notice to the governor of any affected state, of the beginning of such proceeding.<sup>3</sup>

The Board is required to issue a certificate authorizing activities for which such authority is requested unless the Board finds that those activities are inconsistent with public convenience and necessity.<sup>4</sup> The certificate may approve the application as filed or with modifications and may require compliance with conditions, other than labor protection conditions, the Board finds necessary in the public interest.<sup>5</sup>

The Board may not order a railroad to allow another railroad to cross its track, without first issuing a construction certificate to the other railroad.<sup>6</sup> When a certificate has been issued by the Board authorizing the construction or extension of a railroad line, no other rail carrier may block any construction or extension authorized by the certificate by refusing to permit the carrier to cross its property if the construction does not unreasonably interfere with the operation of the crossed line, the operation does not materially interfere with it, and the owner of the crossing line compensates the owner of the crossed line.<sup>7</sup> If the parties are unable to agree on the terms of operation or the amount of payment, either party may submit the matters in dispute to the Board for determination.<sup>8</sup>

Notwithstanding the provision described above and without the approval of the Board, a rail carrier may enter into arrangements for the joint ownership or joint use of spur, industrial, team, switching, or side tracks.<sup>9</sup> The Board does not have authority over the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.<sup>10</sup>

**Caution:**

Notwithstanding the above statutory exception stating that the Board does not have authority over transactions involving the construction, acquisition, operation, abandonment, or discontinuance of a spur track, a federal appellate court has held that, by virtue of its exclusive jurisdiction over transportation by rail carriers, the Board has jurisdiction over certain transactions involving spur track, where the court interpreted the no-authority language in the statute to mean no authority, not no jurisdiction, and thus, the statute does not preclude jurisdiction where the transactions involving spur track do not call for Board authorization which is required for construction, acquisition, or operation of an extended or additional rail line.<sup>11</sup>

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Footnotes

- <sup>1</sup> 49 U.S.C.A. § 10901(a).  
The Surface Transportation Board reasonably determined that a state transportation department's purchase of railroad track and other rail assets from a rail carrier, which reserved a permanent, exclusive freight easement over the track, was not the acquisition of a "railroad line" which required the Board's authorization, where a "railroad line" included not only physical railroad property, but also the interstate freight transportation authority attached to the physical property, which authority was reserved to the rail carrier by the freight easement, despite the transportation department's assumption of maintenance and dispatching responsibilities for freight operations. [Brotherhood of R.R. Signalmen v. Surface Transp. Bd.](#), 638 F.3d 807 (D.C. Cir. 2011).
- <sup>2</sup> 49 U.S.C.A. § 10901(b).
- <sup>3</sup> 49 U.S.C.A. § 10901(b).
- <sup>4</sup> 49 U.S.C.A. § 10901(c).  
In approving applications to construct new railroad lines in southeastern Montana to serve new coal mines, the Surface Transportation Board did not err in concluding that there was a clear public need or demand for the railroad, where the Board cited support for the project from a variety of sources, including coal producers, public utilities, and dairy farmers, who favored the project for its reduced transportation costs, as well as several Montana state officials, who favored the project because of increased employment and development and a broadened tax base. [Northern Plains Resource Council, Inc. v. Surface Transp. Bd.](#), 668 F.3d 1067 (9th Cir. 2011).
- <sup>5</sup> 49 U.S.C.A. § 10901(c).  
The Surface Transportation Board's determination that a railroad had a statutory common carrier duty to transport hazardous materials where agencies promulgated comprehensive safety regulations was a reasonable interpretation of a statute requiring a rail carrier to provide transportation or service on reasonable request, thus warranting rejection of an application for a certificate authorizing the acquisition and operation of 800 feet of railroad track but refusing any obligation to transport toxic inhalation hazard products, despite the applicant's argument that common carriers had a common-law right to designate which commodities they were willing or not willing to transport, since allowing new common carriers to limit their statutory obligations as they chose would produce gaps in the rail system that would undermine an integrated national network. [Riffin v. Surface Transp. Bd.](#), 733 F.3d 340 (D.C. Cir. 2013).
- <sup>6</sup> [Keokuk Junction Ry. Co. v. Surface Transp. Bd.](#), 292 F.3d 884 (D.C. Cir. 2002).



<sup>7</sup> 49 U.S.C.A. § 10901(d)(1).

<sup>8</sup> 49 U.S.C.A. § 10901(d)(2).

<sup>9</sup> 49 U.S.C.A. § 10906.

<sup>10</sup> 49 U.S.C.A. § 10906.

A railroad branch conveyed as a line, rather than a spur, was subject to the Surface Transportation Board's abandonment jurisdiction. *City of Jersey City v. Consolidated Rail Corporation*, 968 F. Supp. 2d 302 (D.D.C. 2013), *aff'd*, 2014 WL 1378306 (D.C. Cir. 2014).

<sup>11</sup> *United Transp. Union-Illinois Legislative Bd. v. Surface Transp. Bd.*, 183 F.3d 606 (7th Cir. 1999).

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## 13 Am. Jur. 2d Carriers § 55

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### Carriers

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### c. Particular Authority of Surface Transportation Board

### (1) In General

## § 55. Requiring sale of railroad lines

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 24

When the Surface Transportation Board finds that (1) the public convenience and necessity require or permit the sale of a particular railroad line, or (2) a railroad line has been identified by the carrier as potentially subject to abandonment, but the rail carrier owning that line has not filed an application to abandon it, and an application to purchase the line has been filed by a financially responsible person, the Board is to require that the rail carrier owning the railroad line sell it to the financially responsible person at a price not less than the constitutional minimum value.<sup>1</sup> The constitutional minimum value of a particular railroad line is presumed to be not less than the net liquidation value of the line or its going concern value, whichever is greater.<sup>2</sup> The Board's price-averaging methodology for calculating the net salvage value of a rail line that a rail carrier is forced to sell has been upheld.<sup>3</sup>

The Board may determine that public convenience and necessity require or permit the sale of a railroad line if the Board determines after a hearing on the record that:<sup>4</sup>

- (1) the rail carrier operating the line refuses within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over the line;
- (2) the transportation over the line is inadequate for the majority of shippers who transport traffic over it;
- (3) the sale of the line will not have a significantly adverse financial effect on the rail carrier operating it;

(4) the sale of such line will not have an adverse effect on the overall operational performance of the rail carrier operating it; and

(5) the sale of the line will be likely to result in improved railroad transportation for shippers that transport traffic over it. The burden of proving that public convenience and necessity require or permit the sale of a particular railroad line is on the person filing the application to acquire it.<sup>5</sup>

If a purchasing carrier proposes to sell or abandon all or any portion of a purchased railroad line, it must offer the right of first refusal with respect to the line or portion of it to the carrier that sold the line.<sup>6</sup>

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#### Footnotes

<sup>1</sup> 49 U.S.C.A. § 10907(b)(1).

<sup>2</sup> 49 U.S.C.A. § 10907(b)(2).

<sup>3</sup> Toledo, Peoria & Western Ry v. Surface Transportation Bd., 462 F.3d 734 (7th Cir. 2006).

<sup>4</sup> 49 U.S.C.A. § 10907(c)(1).

<sup>5</sup> 49 U.S.C.A. § 10907(c)(2).

<sup>6</sup> 49 U.S.C.A. § 10907(h).

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## 13 Am. Jur. 2d Carriers § 56

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### Carriers

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### Part One. In General

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### C. Federal Regulation

### 3. Regulation of Rail Carriers

### c. Particular Authority of Surface Transportation Board

### (1) In General

## § 56. Enforcing rail carrier's obligations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 24

A rail carrier providing transportation or service subject to the jurisdiction of the Surface Transportation Board must provide that transportation or service on reasonable request.<sup>1</sup> As a result of this requirement, a railroad may not refuse to provide services merely because doing so would be inconvenient or unprofitable.<sup>2</sup> However, this obligation is not absolute, and an embargo may be imposed by a carrier ceasing or limiting service temporarily when it is physically unable to serve specific locations.<sup>3</sup>

A rail carrier does not violate its common carrier duties because it fulfills its reasonable commitments under statutorily authorized contracts before responding to reasonable requests for service; however, commitments which deprive a carrier of its ability to respond to reasonable requests for common carrier service are not reasonable.<sup>4</sup>

Since railroads may abandon or discontinue service over side tracks without prior Board authorization,<sup>5</sup> claims may not be brought under the statute<sup>6</sup> that a railroad did not provide service on a sidetrack.<sup>7</sup>

A rail carrier must also provide to any person on request the carrier's rates and other service terms.<sup>8</sup> A rail carrier may not increase any common carrier rates or change any common carrier service terms unless 20 days have expired after written or electronic notice is provided to any person who within the previous 12 months has requested those rates or terms or has made arrangements with the carrier for a shipment that would be subject to the increased rates or changed terms.<sup>9</sup>

With respect to the transportation of agricultural products, in addition to the above requirements, a rail carrier must publish,

make available, and retain for public inspection its common carrier rates, schedules of rates, and other service terms, and any proposed and actual changes to such rates and service terms.<sup>10</sup>

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#### Footnotes

- <sup>1</sup> 49 U.S.C.A. § 11101(a).  
While the common carrier obligation binds the railroads to furnish transportation or service on reasonable request, railroads need not own all the cars used on their railroad lines. [Shippers Committee, OT-5 v. I.C.C., 968 F.2d 75 \(D.C. Cir. 1992\)](#).
- <sup>2</sup> [Decatur County Com'rs v. Surface Transp. Bd., 308 F.3d 710 \(7th Cir. 2002\)](#).
- <sup>3</sup> [Decatur County Com'rs v. Surface Transp. Bd., 308 F.3d 710 \(7th Cir. 2002\)](#) (describing the balancing test and upholding a finding that the embargo was reasonable).
- <sup>4</sup> 49 U.S.C.A. § 11101(a).
- <sup>5</sup> § 54.
- <sup>6</sup> 49 U.S.C.A. § 11101(a).
- <sup>7</sup> [Union Pacific R.R. Co. v. Coast Packing Co., 236 F. Supp. 2d 1130 \(C.D. Cal. 2002\)](#) (for this reason, the court did not have subject-matter jurisdiction over a consignee's claim against a carrier to recover the value of goods it was unable to unload from tank cars because of the carrier's failure to maintain level side tracks).
- <sup>8</sup> 49 U.S.C.A. § 11101(b).
- <sup>9</sup> 49 U.S.C.A. § 11101(c).
- <sup>10</sup> 49 U.S.C.A. § 11101(d).

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### Carriers

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### c. Particular Authority of Surface Transportation Board

### (1) In General

## § 57. Use of terminal facilities by another carrier; reciprocal switching agreements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 33

The Surface Transportation Board may require terminal facilities, including mainline tracks for a reasonable distance outside of a terminal, owned by a rail carrier providing transportation subject to the Board's jurisdiction to be used by another rail carrier if the Board finds that use to be practicable and in the public interest, without substantially impairing the ability of the rail carrier owning the facilities or entitled to use them to handle its own business. The rail carriers are responsible for establishing the conditions and compensation for the use of the facilities. However, if the rail carriers cannot agree, the Board may establish conditions and compensation for the use of the facilities under the principles controlling compensation in condemnation proceedings. The compensation must be paid or adequately secured before a rail carrier may begin to use the facilities of another rail carrier.<sup>1</sup>

The Board may require that rail carriers enter into reciprocal switching agreements when it finds that the agreements are practicable and in the public interest or when those agreements are necessary to provide competitive rail service. The rail carriers entering into such an agreement must establish the conditions and compensation applicable to the agreement, but if the rail carriers cannot agree within a reasonable period, the Board may establish the conditions and compensation.<sup>2</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 11102(a).

<sup>2</sup> 49 U.S.C.A. § 11102(c)(1).

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## 13 Am. Jur. 2d Carriers § 58

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### Carriers

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### (1) In General

## § 58. Switch connections and tracks

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 33

### A.L.R. Library

[Interstate Commerce Commission's exercise of authority under sec. 223 of Staggers Rail Act of 1980 \(49 U.S.C.A. sec. 11103\(c\)\) to require rail carriers to enter into reciprocal switching agreement, 105 A.L.R. Fed. 637](#)

On the application of the owner of a lateral branch line of a railroad or of a shipper tendering interstate traffic for transportation, a rail carrier providing transportation subject to the jurisdiction of the Surface Transportation Board must construct, maintain, and operate, on reasonable conditions, a switch connection to connect that branch line or private side track with its railroad and must furnish cars to move that traffic to the best of its ability without discrimination when the connection is reasonable practicable, can be safely made, and will furnish sufficient business to justify its construction and maintenance.<sup>1</sup>

If a rail carrier fails to install and operate a switch connection after such an application is made, the owner of the lateral branch line or the shipper may file a complaint with the Board.<sup>2</sup> The Board is required to investigate the complaint and decide the safety, practicability, and justification of the request, and the compensation to be paid for the connection if it approves of



the request, but the Board may direct the rail carrier to comply only after a full hearing.<sup>3</sup>

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Footnotes

<sup>1</sup> 49 U.S.C.A. § 11103(a).

<sup>2</sup> 49 U.S.C.A. § 11103(b).

<sup>3</sup> 49 U.S.C.A. § 11103(b).

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### c. Particular Authority of Surface Transportation Board

### (1) In General

## § 59. Rail car service

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 24

A rail carrier providing transportation subject to the jurisdiction of the Surface Transportation Board must furnish safe and adequate car service and establish, observe, and enforce reasonable rules and practices regarding car service. The Board may require that a rail carrier provide facilities and equipment that are reasonably necessary to furnish safe and adequate car service if the Board decides that the rail carrier has materially failed to furnish that service.<sup>1</sup>

The Board may act only after a hearing on the record and an affirmative finding based on the evidence presented that providing the facilities or equipment will not materially and adversely affect the rail carrier's ability to provide safe and adequate transportation; the amount spent for the facilities or equipment, including a return equal to the rail carrier's current cost of capital, will be recovered; and providing the facilities or equipment will not impair the rail carrier's ability to attract adequate capital.<sup>2</sup>

The Board may require a rail carrier to file its car service rules with the Board.<sup>3</sup>

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### Footnotes

<sup>1</sup> [49 U.S.C.A. § 11121\(a\)\(1\)](#).

<sup>2</sup> 49 U.S.C.A. § 11121(a)(1)(A) to (C).

<sup>3</sup> 49 U.S.C.A. § 11121(a)(2).

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### Part One. In General

#### III. Regulation and Control of Carrier's Operations

##### C. Federal Regulation

##### 3. Regulation of Rail Carriers

##### c. Particular Authority of Surface Transportation Board

##### (2) Abandonment of Railroad Lines; Discontinuance of Transportation

## § 60. Procedures for abandonment or discontinuance of railroad line

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 24

### A.L.R. Library

[Propriety, under 49 U.S.C.A. sec. 10903\(a\), of Interstate Commerce Commission's decision permitting railroad to abandon line or discontinue service, 77 A.L.R. Fed. 231](#)

A rail carrier providing transportation subject to the jurisdiction of the Surface Transportation Board which intends to abandon any part of its railroad lines or discontinue the operation of all rail transportation over any part of its railroad lines must file an application with the Board.<sup>1</sup> Provisions are required to protect the interests of employees.<sup>2</sup>

A rail carrier providing transportation subject to the jurisdiction of the Board may abandon any part of its railroad lines or discontinue the operation of all rail transportation over any part of its lines only if the Board finds that the present or future public convenience and necessity require or permit that action.<sup>3</sup> In making the finding, the Board is required to consider whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development.<sup>4</sup> The Board may approve or deny the application or approve the application with such modifications and conditions as are required by public convenience and necessity.<sup>5</sup>

The statute described above imposes a duty to preserve and promote continued rail service, and specifically, in the context of the abandonment or discontinuance of rail service, one of the Board's functions is to provide the public with a degree of protection against the unnecessary discontinuance, cessation, interruption, or obstruction of available rail service.<sup>6</sup> However, since the Board does not have authority over spur lines,<sup>7</sup> a railroad is not required to request authorization from the Board to abandon a spur or industrial track in an industrial park.<sup>8</sup>

The Board's decision granting an application with regard to abandonment is arbitrary and capricious where it fails to distinguish its own adverse precedent and to balance all competing interests involved in the application; the Board may not simply accede to a public entity's wish to evict the railroad from its facilities in a so-called "reverse abandonment" proceeding.<sup>9</sup>

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#### Footnotes

- <sup>1</sup> 49 U.S.C.A. § 10903(a)(1).  
49 U.S.C.A. § 10903(a)(2) prescribes the content of the application, and 49 U.S.C.A. § 10903(a)(3) describes the manner of providing notice of it.  
A city had Article III standing to bring an action to void a consolidated rail freight transportation system's sale of historic rail property to developers, on the ground that the property was a railroad line for which the system was first required to obtain abandonment authority from the Surface Transportation Board, where the system's refusal to seek abandonment authority injured the city by depriving it of the opportunity to request the Board to impose conditions to permit the city to acquire the property or to protect the property's historic value, and the city's injury would be redressed by a ruling that the property qualified as a railroad line. *City of Jersey City v. Consolidated Rail Corp.*, 668 F.3d 741 (D.C. Cir. 2012).
- <sup>2</sup> 49 U.S.C.A. § 10903(b)(2).
- <sup>3</sup> 49 U.S.C.A. § 10903(d).  
The public convenience and necessity standard applies to both abandonments and discontinuances. *New York Cross Harbor R.R. v. Surface Transp. Bd.*, 374 F.3d 1177 (D.C. Cir. 2004).
- <sup>4</sup> 49 U.S.C.A. § 10903(d).
- <sup>5</sup> 49 U.S.C.A. § 10903(e).
- <sup>6</sup> *New York Cross Harbor R.R. v. Surface Transp. Bd.*, 374 F.3d 1177 (D.C. Cir. 2004).
- <sup>7</sup> § 54.
- <sup>8</sup> *Port City Properties v. Union Pacific R. Co.*, 518 F.3d 1186 (10th Cir. 2008).
- <sup>9</sup> *New York Cross Harbor R.R. v. Surface Transp. Bd.*, 374 F.3d 1177 (D.C. Cir. 2004).

## 13 Am. Jur. 2d Carriers § 61

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### Carriers

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### c. Particular Authority of Surface Transportation Board

### (2) Abandonment of Railroad Lines; Discontinuance of Transportation

## § 61. Offers of financial assistance to avoid abandonment and discontinuance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 24

Any rail carrier that has filed an application for abandonment or discontinuance must promptly provide certain information to a party considering an offer of financial assistance and to the Surface Transportation Board.<sup>1</sup> Within four months after an application for abandonment or discontinuance is filed, any person may offer to subsidize or purchase the railroad line that is the subject of the application, and the offer must be filed concurrently with the Board.<sup>2</sup> If the offer to subsidize or purchase is less than the carrier's estimate, the offer must explain the basis of the disparity, and the manner in which the offer is calculated.<sup>3</sup>

The abandonment or discontinuance may be implemented unless the Board finds that one or more financially responsible persons (including a governmental authority) have offered financial assistance regarding that part of the railroad line to be abandoned or over which all rail transportation is to be discontinued.<sup>4</sup> If the Board finds that such an offer of financial assistance has been made, the abandonment or discontinuance must be postponed until the carrier and a financially responsible person have reached agreement on a transaction for the subsidy or sale of the line, or the conditions and amount of compensation are established.<sup>5</sup> If there is a failure to agree, either party may request that the Board establish the conditions and amount of compensation.<sup>6</sup>

The Board may consider the likelihood of continued rail freight service as a factor in deciding whether to approve a disputed offer of financial assistance in rail abandonment proceedings, even though the statute does not specifically require that it do so, particularly given the constitutional problems inherent in interpreting the statute to require that a rail carrier desiring to discontinue rail freight service sell its lines solely because a financially responsible person offered to buy them.<sup>7</sup> For instance,

the Board's decision to reject a homeowners' organization's offer of financial assistance to acquire a railroad line which the owner sought to abandon was not arbitrary and capricious, given evidence that future traffic on the line was highly unlikely and that the organization was not interested in offering rail service.<sup>8</sup>

The Board's decision is binding on both parties, except the person who has offered to subsidize or purchase the line may withdraw the offer within 10 days of the Board's decision.<sup>9</sup> Thus, the statute imposes a "forced acceptance," unless the buyer takes the affirmative action of withdrawing its offer, and this "forced acceptance" is the logical counterpart of requiring that the abandoning line owner sell in accordance with the terms of the sale established by the Board; thus, the purchaser does not need to file an acceptance of the terms of sale.<sup>10</sup> Where an offer has been withdrawn pursuant to statute, the abandonment or discontinuance may be carried out immediately, unless other offers are being considered.<sup>11</sup>

If a rail carrier receives more than one offer to subsidize or purchase, it must select the offeror with whom it wishes to transact business and complete the subsidy or sale agreement, or request that the Board establish the conditions and amount of compensation.<sup>12</sup> If the Board has established the conditions and amount of compensation, and the original offer has been withdrawn, any other offeror whose offer was made within the statutory period may accept the Board's decision, and the Board must require the carrier to enter into a subsidy or sale agreement with such offeror, if such subsidy or sale agreement incorporates the Board's decision.<sup>13</sup>

**Observation:**

Upon abandonment of a railroad line, the obligation of the rail carrier abandoning the line to provide common carrier transportation on that line is extinguished.<sup>14</sup>

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<sup>1</sup> 49 U.S.C.A. § 10904(b).

<sup>2</sup> 49 U.S.C.A. § 10904(c).

<sup>3</sup> 49 U.S.C.A. § 10904(c).

<sup>4</sup> 49 U.S.C.A. § 10904(d)(1).

<sup>5</sup> 49 U.S.C.A. § 10904(d)(2).

<sup>6</sup> 49 U.S.C.A. § 10904(e).

<sup>7</sup> *Kulmer v. Surface Transp. Bd.*, 236 F.3d 1255 (10th Cir. 2001).

<sup>8</sup> *Redmond-Issaquah R.R. Preservation Ass'n v. Surface Transp. Bd.*, 223 F.3d 1057 (9th Cir. 2000).

<sup>9</sup> 49 U.S.C.A. § 10904(f)(2).

<sup>10</sup> *Railroad Ventures, Inc. v. Surface Transp. Bd.*, 299 F.3d 523, 2002 FED App. 0259P (6th Cir. 2002).

<sup>11</sup> 49 U.S.C.A. § 10904(f)(2).

<sup>12</sup> 49 U.S.C.A. § 10904(f)(3).

<sup>13</sup> 49 U.S.C.A. § 10904(f)(3).

<sup>14</sup> 49 U.S.C.A. § 10904(g).  
As to the duty of a rail carrier to provide transportation, see § 56.

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## 13 Am. Jur. 2d Carriers § 62

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### Carriers

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### c. Particular Authority of Surface Transportation Board

### (2) Abandonment of Railroad Lines; Discontinuance of Transportation

## § 62. Offers of financial assistance to avoid abandonment and discontinuance—Duties of purchaser

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 24

No purchaser of a line or portion of line sold through an offer of financial assistance<sup>1</sup> may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, nor may such purchaser transfer such line, except to the rail carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.<sup>2</sup>

No approved subsidy arrangement will remain in effect for more than one year, unless otherwise mutually agreed by the parties.<sup>3</sup>

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### Footnotes

<sup>1</sup> [§ 61.](#)

<sup>2</sup> [49 U.S.C.A. § 10904\(f\)\(4\)\(A\).](#)

<sup>3</sup> [49 U.S.C.A. § 10904\(f\)\(4\)\(B\).](#)

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### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### c. Particular Authority of Surface Transportation Board

### (2) Abandonment of Railroad Lines; Discontinuance of Transportation

## § 63. Offering abandoned rail properties for sale for public purposes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 24

When the Surface Transportation Board approves an application for abandonment or discontinuance,<sup>1</sup> it is required to determine whether the rail properties that are involved in the proposed abandonment or discontinuance are appropriate for use for public purposes, including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the Board so finds that the rail properties are appropriate for public purposes and not required for continued rail operations, the railroad may dispose of the properties only under conditions provided in the Board's order. The conditions may include a prohibition on disposal for not more than 180 days after the effective date of the order, unless the properties have first been offered, on reasonable terms, for sale for public purposes.<sup>2</sup>

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### Footnotes

<sup>1</sup> § 60.

<sup>2</sup> 49 U.S.C.A. § 10905.

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Works.

## 13 Am. Jur. 2d Carriers § 64

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### Carriers

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

#### C. Federal Regulation

#### 3. Regulation of Rail Carriers

##### c. Particular Authority of Surface Transportation Board

##### (3) Unification, Merger, and Acquisition of Control; Pooling Arrangements

## § 64. Transactions subject to STB approval

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 17

### Treatises and Practice Aids

As to rail carrier combination applications and proceedings, generally, see Federal Procedural Forms, Railroads  
[\[Westlaw®\(r\): Search Query\]](#)

Certain transactions between or involving rail carriers relating to consolidations; mergers; purchases, leases or contracts to operate another rail carrier's property; acquisition of control of a rail carrier; or acquisition of trackage rights over, or joint ownership or joint use of, a railroad line operated by another rail carrier require the approval and authorization of the Surface Transportation Board (STB).<sup>1</sup> A person may complete one of these transactions or participate in achieving control or management, including the power to exercise control or management, in a common interest of more than one rail carrier regardless of how that result is reached, only with the Board's approval and authorization.<sup>2</sup>

In addition to other transactions, each of the following transactions are considered achievements of control or management:<sup>3</sup>

- a transaction by a rail carrier that has the effect of putting that rail carrier and the person affiliated with it, taken together, in

control of another rail carrier

- a transaction by a person affiliated with a rail carrier that has the effect of putting that rail carrier and the persons affiliated with it, taken together, in control of another rail carrier
- a transaction by at least two persons acting together (one of whom is a rail carrier or is affiliated with a rail carrier) that has the effect of putting those persons and rail carriers and persons affiliated with any of them, or with any of those affiliated rail carriers, taken together, in control of another rail carrier

**Definition:**

A person is affiliated with a rail carrier if, because of the relationship between that person and a rail carrier, it is reasonable to believe that the affairs of another rail carrier, control of which may be acquired by that person, will be managed in the interest of the other rail carrier.<sup>4</sup>

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Footnotes

<sup>1</sup> 49 U.S.C.A. § 11323(a).

<sup>2</sup> 49 U.S.C.A. § 11323(b).  
As to the procedure for obtaining approval, see 49 U.S.C.A. §§ 11324(a), (f), 11325.

<sup>3</sup> 49 U.S.C.A. § 11323(b).

<sup>4</sup> 49 U.S.C.A. § 11323(c).

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## 13 Am. Jur. 2d Carriers § 65

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

#### C. Federal Regulation

#### 3. Regulation of Rail Carriers

#### c. Particular Authority of Surface Transportation Board

#### (3) Unification, Merger, and Acquisition of Control; Pooling Arrangements

## § 65. Conditions of STB approval

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  17, 24

In a proceeding that involves the merger or control of at least two Class I railroads, as defined by the Surface Transportation Board (STB), the Board is required to consider various factors described in the statute<sup>1</sup> and is required to approve and authorize a transaction when it finds the transaction is consistent with the public interest.<sup>2</sup>

The Board may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities. Any trackage rights and related conditions imposed to alleviate the anticompetitive effects of the transaction must provide for operating terms and compensation levels to ensure that such effects are alleviated. When the transaction contemplates a guaranty or assumption of payment of dividends or of fixed charges or will result in an increase of total fixed charges, the Board may approve and authorize the transaction only if it finds that the guaranty, assumption, or increase is consistent with the public interest. The Board may require the inclusion of other rail carriers located in the area involved in the transaction if they apply for inclusion and the Board finds their inclusion to be consistent with the public interest.<sup>3</sup>

In a proceeding which does not involve the merger or control of at least two Class I railroads, as defined by the Board, the Board is required to approve such an application unless it finds that (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.<sup>4</sup>

**Observation:**

It has been noted that the Board is not required to take measures to enhance competition in the affected region as opposed to preserving prior levels of competition.<sup>5</sup>

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**Footnotes**

<sup>1</sup> 49 U.S.C.A. § 11324(b).

<sup>2</sup> 49 U.S.C.A. § 11324(c).

<sup>3</sup> 49 U.S.C.A. § 11324(c).

<sup>4</sup> 49 U.S.C.A. § 11324(d).

An American railroad, which alleged in a civil antitrust action that a Canadian railroad intended to force the sale of the plaintiff's assets to the defendant so as to monopolize rail transportation to and from northern New England, failed to demonstrate a "dangerous probability of achieving monopoly power," where the defendant controlled not much more than 10% of the market, the complaint cited only one instance of the defendant's predatory pricing, but there was no evidence of the effect of that incident on the plaintiff's market share, and it was uncertain whether the defendant would obtain necessary approval to purchase the plaintiff pursuant to 49 U.S.C.A. § 11324(d). *Springfield Terminal Ry. Co. v. Canadian Pacific Ltd.*, 133 F.3d 103 (1st Cir. 1997).

<sup>5</sup> *Erie-Niagara Rail Steering Committee v. Surface Transp. Bd.*, 247 F.3d 437 (2d Cir. 2001).

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## 13 Am. Jur. 2d Carriers § 66

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### c. Particular Authority of Surface Transportation Board

### (3) Unification, Merger, and Acquisition of Control; Pooling Arrangements

## § 66. Pooling arrangements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 17

A rail carrier providing transportation subject to the jurisdiction of the Surface Transportation Board may not agree or combine with another of those rail carriers to pool or divide traffic or services or any part of their earnings without the Board's approval. The Board may approve and authorize the agreement or combination if the rail carriers involved assent to the pooling or division and the Board finds that a pooling or division of traffic, services, or earnings will be in the interest of better service to the public or of economy of operation and will not unreasonably restrain competition.<sup>1</sup> The Board may impose conditions governing the pooling or division and may approve and authorize payment of a reasonable consideration between the rail carriers.<sup>2</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 11322(a).

<sup>2</sup> 49 U.S.C.A. § 11322(b).

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Works.

## 13 Am. Jur. 2d Carriers § 67

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### c. Particular Authority of Surface Transportation Board

### (3) Unification, Merger, and Acquisition of Control; Pooling Arrangements

## § 67. Exclusive STB jurisdiction; exemption from other laws

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 17

The authority of the Surface Transportation Board (STB) to approve pooling arrangements or combinations involving carriers is exclusive.<sup>1</sup> A rail carrier or corporation participating in or resulting from a transaction approved by or exempted by the Board may implement the transaction, own and operate property, and exercise control or franchises acquired through the transaction without the approval of a state authority.<sup>2</sup> A rail carrier, corporation, or person participating in that approved or exempted transaction is exempt from the antitrust laws and from all other law, including state and municipal law, as necessary to let that rail carrier, corporation, or person implement the transaction, hold, maintain, and operate property and exercise control or franchises acquired through the transaction.<sup>3</sup>

However, if a purchase and sale, a lease, or a corporate consolidation or merger is involved in the transaction, the carrier or corporation may implement the transaction only with the assent of a majority or the number required under applicable state law of the votes of the holders of the capital stock of that corporation entitled to vote. The vote must occur at a regular meeting or special meeting called for that purpose of those stockholders, and the notice of the meeting must indicate its purpose.<sup>4</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 11321(a).

The Surface Transportation Board had exclusive authority to approve and authorize a proposed railway merger and to determine a fair price for minority shares, despite a provision of the Interstate Commerce Commission Termination Act that repealed an earlier statute giving the former ICC authority to approve the issuance of securities by railroads and assumption of liabilities arising from that transaction. [Zatz v. U.S.](#), 149 F.3d 144 (2d Cir. 1998).

<sup>2</sup> 49 U.S.C.A. § 11321(a).

<sup>3</sup> 49 U.S.C.A. § 11321(a).

The phrase “other law” may include both provisions of the Railway Labor Act and even existing collective bargaining agreements, assuming the necessity prerequisite is met. [CSX Transp., Inc. v. Transportation-Communications Intern. Union](#), 413 F. Supp. 2d 553 (D. Md. 2006), *aff’d*, 480 F.3d 678 (4th Cir. 2007).

<sup>4</sup> 49 U.S.C.A. § 11321(a).

## 13 Am. Jur. 2d Carriers § 68

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### c. Particular Authority of Surface Transportation Board

### (3) Unification, Merger, and Acquisition of Control; Pooling Arrangements

## § 68. Employee protection and other labor issues

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 17

When approval is sought for a transaction involving the consolidation, merger, or acquisition of control of a rail carrier, the Surface Transportation Board must require that the rail carrier provide a fair arrangement with regard to the interests of employees who are affected by the transaction.<sup>1</sup> The arrangement and the order approving the transaction must require that the employees of the affected rail carrier will not be in a worse position related to their employment as a result of the transaction during the four years following the effective date of the final action of the Board (or if an employee was employed for a lesser period of time by the rail carrier before the action became effective, for that lesser period).<sup>2</sup>

The Board's exclusive jurisdiction over combinations and pooling arrangements<sup>3</sup> extends to disputes concerning changes to labor agreements needed to implement authorized consolidations, and the Railway Labor Act yields if it impedes the implementation of an approved consolidation.<sup>4</sup> The Board's exclusive authority to approve railroad mergers and consolidations extends to abrogating rights and obligations, including seniority rights, under existing collective bargaining agreements to the extent necessary to realize the public transportation benefits of a merger.<sup>5</sup>

When approval is sought for a transaction involving the consolidation, merger, or acquisition of control of a rail carrier, for a transaction involving one Class II and one or more Class III rail carriers, there must be a fair arrangement with regard to the interests of employees who are affected by the transaction, except that such arrangement is limited to one year of severance pay, which cannot exceed the amount of earnings from the railroad employment of that employee during the 12-month period immediately preceding the date on which the application for approval of such transaction is filed with the Board. The amount of such severance pay will be reduced by the amount of earnings from railroad employment of that employee with the

acquiring carrier during the 12-month period immediately following the effective date of the transaction. The parties may agree to other terms.<sup>6</sup> No transaction involving one Class II and one or more Class III rail carriers may have the effect of avoiding a collective bargaining agreement or shifting work from a rail carrier with a collective bargaining agreement to a rail carrier without a collective bargaining agreement.<sup>7</sup>

An exemption is provided for transactions involving only Class III rail carriers.<sup>8</sup>

**Practice Tip:**

Board orders allowing an organization to refuse to identify which nonunion employees it purports to represent and relying solely on a declaration by the carrier's official regarding an arbitrator's finding have been set aside as arbitrary and capricious.<sup>9</sup>

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Footnotes

- <sup>1</sup> 49 U.S.C.A. § 11326(a).  
A Surface Transportation Board rule exempting temporary trackage rights agreements from Board authorization requirements was invalid because it failed to include statutorily required employee protective conditions. [United Transp. Union-General Committee of Adjustment v. Surface Transp. Bd.](#), 363 F.3d 465 (D.C. Cir. 2004).
- <sup>2</sup> 49 U.S.C.A. § 11326(a).
- <sup>3</sup> § 67.
- <sup>4</sup> [Union R. Co. v. United Steelworkers of America](#), 242 F.3d 458 (3d Cir. 2001).
- <sup>5</sup> [Spaulding v. United Transp. Union](#), 279 F.3d 901 (10th Cir. 2002).
- <sup>6</sup> 49 U.S.C.A. § 11326(b).
- <sup>7</sup> 49 U.S.C.A. § 11324(e).
- <sup>8</sup> 49 U.S.C.A. § 11326(c).
- <sup>9</sup> [Union Pacific R.R. Co. v. Surface Transp. Bd.](#), 358 F.3d 31 (D.C. Cir. 2004).

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## 13 Am. Jur. 2d Carriers § 69

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### Part One. In General

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### C. Federal Regulation

### 3. Regulation of Rail Carriers

### c. Particular Authority of Surface Transportation Board

### (3) Unification, Merger, and Acquisition of Control; Pooling Arrangements

## § 69. Restrictions on officers and directors

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 17

A person may hold the position of officer or director of more than one rail carrier only when authorized by the Surface Transportation Board, which may give that authorization only when public or private interests will not be adversely affected.<sup>1</sup> An exception is provided for an individual holding the position of officer or director only of Class III rail carriers.<sup>2</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 11328(a).

<sup>2</sup> 49 U.S.C.A. § 11328(b).

## 13 Am. Jur. 2d Carriers § 70

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### d. Enforcement

### (1) In General

## § 70. Power of STB to enforce statutes regulating rail carriers; investigation by STB

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  18(1)

### Treatises and Practice Aids

As to Surface Transportation Board Action, generally, see Federal Procedural Forms, Railroads [[Westlaw®\(r\): Search Query](#)]

If the Surface Transportation Board (STB) finds that a rail carrier is violating the statutes governing rail carriers subject to the Board's jurisdiction,<sup>1</sup> it is required take appropriate action to compel compliance.<sup>2</sup>

The Board may begin an investigation on the Board's own initiative or upon receiving a complaint.<sup>3</sup> A formal investigative proceeding is dismissed automatically unless it is concluded by the Board with administrative finality by the end of the third year after the date on which it was begun.<sup>4</sup>

In any investigation commenced on the Board's own initiative, the Board must, among other things, only investigate issues that are of national or regional significance and dismiss any investigation that is not concluded by the Board with administrative finality within one year after the date on which it was commenced.<sup>5</sup> If the Board finds a violation in a



proceeding brought on its own initiative, any remedy from such proceeding may only be applied prospectively.<sup>6</sup>

Any parties to an investigation against whom a violation is found as a result of an investigation begun on the Board's own initiative may institute an action in the United States Court of Appeals for the appropriate judicial circuit for de novo review of such order.<sup>7</sup> The court has jurisdiction to enter a judgment affirming, modifying, or setting aside, in whole or in part, the order of the Board and may remand the proceeding to the Board for such further action as the court may direct.<sup>8</sup>

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#### Footnotes

- <sup>1</sup> 49 U.S.C.A. §§ 10101 to 11908.
- <sup>2</sup> 49 U.S.C.A. § 11701(a).
- <sup>3</sup> 49 U.S.C.A. § 11701(a).  
As to the procedures for filing a complaint, see 49 U.S.C.A. § 11701(b).
- <sup>4</sup> 49 U.S.C.A. § 11701(c).
- <sup>5</sup> 49 U.S.C.A. § 11701(d) (also detailing timing and other procedural requirements).
- <sup>6</sup> 49 U.S.C.A. § 11701(a).
- <sup>7</sup> 49 U.S.C.A. § 11701(e).
- <sup>8</sup> 49 U.S.C.A. § 11701(e).

## 13 Am. Jur. 2d Carriers § 71

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### d. Enforcement

### (1) In General

## § 71. Initiation of civil action by STB

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  [18\(1\)](#), [18\(3\)](#), [18\(6\)](#), [34](#)

### Treatises and Practice Aids

As to car service orders, generally, see Federal Procedural Forms, Railroads [\[Westlaw®\(r\): Search Query\]](#)

The Surface Transportation Board (STB) may bring a civil action:<sup>1</sup>

- (1) to enjoin a rail carrier from violating statutes requiring Board authorization for the construction of railroad lines, short line purchases, or abandoning or discontinuing rail lines<sup>2</sup> or a regulation prescribed or order or certificate issued under any of those statutes;
- (2) to enforce the statutes governing consolidations, mergers, and other combinations involving rail carriers<sup>3</sup> and to compel compliance with an order of the Board under those statutes; and
- (3) to enforce an order of the Board when it is violated by a rail carrier providing transportation subject to the Board's jurisdiction, except a civil action to enforce an order for the payment of money.<sup>4</sup>

Footnotes

- <sup>1</sup> 49 U.S.C.A. § 11702.
- <sup>2</sup> 49 U.S.C.A. §§ 10901 to 10906, discussed in §§ 54, 60 to 63.
- <sup>3</sup> 49 U.S.C.A. §§ 11321 et seq., discussed in §§ 64 to 66.
- <sup>4</sup> As to the enforcement of orders to pay money, see § 78.

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### d. Enforcement

### (1) In General

## § 72. Enforcement by attorney general

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  34

The attorney general may, and on request of the Surface Transportation Board is required to, bring court proceedings to enforce the statutes governing rail carriers subject to the Board's jurisdiction,<sup>1</sup> or a regulation or order of the Board or certificate issued under those statutes and to prosecute a person violating those statutes, regulations, orders, or certificates.<sup>2</sup>

The United States government may bring a civil action on behalf of a person to compel a rail carrier providing transportation subject to the jurisdiction of the Board to provide that transportation to that person in compliance with the statutes at the same rate charged or on conditions as favorable as those given by the rail carrier for like traffic under similar conditions to another person.<sup>3</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. §§ 10101 to 11908.

<sup>2</sup> 49 U.S.C.A. § 11703(a).

<sup>3</sup> 49 U.S.C.A. § 11703(b).

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers


### d. Enforcement

### (1) In General

## § 73. Civil action to enforce order of STB

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  18(3), 34

### Treatises and Practice Aids

As to enforcement of Surface Transportation Board actions, generally, see Federal Procedural Forms, Railroads  
[\[Westlaw®\(r\): Search Query\]](#)

A person injured because a rail carrier providing transportation or service subject to the jurisdiction of the Surface Transportation Board (STB) does not obey an order of the Board, except an order for the payment of money, may bring a civil action in a United States district court to enforce that order.<sup>1</sup>

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### Footnotes

<sup>1</sup> [49 U.S.C.A. § 11704\(a\)](#).  
As to enforcement of orders to pay money, see [§ 78](#).

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### Carriers

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### Part One. In General

#### III. Regulation and Control of Carrier's Operations

##### C. Federal Regulation

##### 3. Regulation of Rail Carriers

##### d. Enforcement

##### (2) Damages

## § 74. Rail carrier liability; manner of recovery; voluntary arbitration process

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  [18\(1\)](#) to [18\(6\)](#), [19](#), [34](#), [36](#)

A rail carrier providing transportation subject to the jurisdiction of the Surface Transportation Board is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of the federal statutes governing rail carriers and for amounts charged that exceed the applicable rate for the transportation.<sup>1</sup>

A person may file a complaint with the Board or bring a civil action to enforce liability against a rail carrier providing transportation subject to the Board's jurisdiction.<sup>2</sup>

The Board may order a rail carrier providing transportation subject to the jurisdiction of the Board to pay damages only when the proceeding is on complaint.<sup>3</sup> When the Board makes an award of damages, it is required to order the rail carrier to pay the amount awarded by a specific date.<sup>4</sup>

A voluntary and binding arbitration process has been established that applies to disputes involving rail rate and practice complaints subject to the jurisdiction of the Board.<sup>5</sup> This arbitration process applies to disputes involving rates, demurrage, accessorial charges, misrouting, or mishandling of rail cars, or a carrier's published rules and practices as applied to particular rail transportation.<sup>6</sup> This arbitration process does not prevent parties from independently seeking or utilizing private arbitration services to resolve any disputes the parties may have<sup>7</sup> nor does the process apply to disputes: to obtain the grant, denial, stay, or revocation of any license, authorization, or exemption; to prescribe for the future any conduct, rules, or results of general, industry-wide applicability; to enforce a labor protective condition; or that are solely between two or more rail carriers.<sup>8</sup> Any decision reached through this arbitration process must be in writing and be binding upon the parties.<sup>9</sup> If a party



appeals an arbitration decision reached pursuant to this process to the Board, the Board may review the decision to determine if: the decision is consistent with sound principles of rail regulation economics; a clear abuse of arbitral authority or discretion occurred; the decision directly contravenes statutory authority; or the award limitation was violated.<sup>10</sup>

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#### Footnotes

- <sup>1</sup> 49 U.S.C.A. § 11704(b).
- <sup>2</sup> 49 U.S.C.A. § 11704(c)(1).  
As to civil actions for overcharges and unreasonable rates, see §§ 178 to 195.
- <sup>3</sup> 49 U.S.C.A. § 11704(c)(2).
- <sup>4</sup> 49 U.S.C.A. § 11704(c)(2).  
As to enforcement of orders to pay money, see § 78.
- <sup>5</sup> 49 U.S.C.A. § 11708(a).  
As to the regulations promulgated to bring into effect this statutory provision, see 49 C.F.R. §§ 1108.1 to 1108.13.
- <sup>6</sup> 49 U.S.C.A. § 11708(b)(1).
- <sup>7</sup> 49 U.S.C.A. § 11708(b)(3).
- <sup>8</sup> 49 U.S.C.A. § 11708(b)(2).
- <sup>9</sup> 49 U.S.C.A. § 11708(d)(2), (4).
- <sup>10</sup> 49 U.S.C.A. § 11708(h).

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## 13 Am. Jur. 2d Carriers § 75

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### Carriers

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### d. Enforcement

### (2) Damages

## § 75. Liability of rail carriers under receipts and bills of lading

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  19, 36

### Treatises and Practice Aids

As to enforcement of liability under Interstate Receipts and Bills of Lading (Carmack Amendment), generally, see Federal Procedural Forms, Transportation [[Westlaw®\(r\): Search Query](#)]

A rail carrier and any other carrier that delivers the property upon which a receipt or bill of lading was issued, and which are providing transportation or service subject to the jurisdiction of the Surface Transportation Board, are liable to the person entitled to recover under the receipt or bill of lading.<sup>1</sup> A remedy in damages is provided for the actual loss or injury to property caused by the receiving or delivering rail carrier or another rail carrier over whose line or route the property is transported.<sup>2</sup> The failure to issue a receipt or bill of lading does not affect the liability of a rail carrier.<sup>3</sup>

The rail carrier issuing the receipt or bill of lading or delivering the property has certain recovery rights from the rail carrier over whose line or route the loss or injury occurred.<sup>4</sup>

A civil action to enforce liability under a receipt or bill of lading may be brought in a district court of the United States or in a

state court<sup>5</sup> against the liable carriers in the specified venues.<sup>6</sup>

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#### Footnotes

- <sup>1</sup> 49 U.S.C.A. § 11706(a).
- <sup>2</sup> 49 U.S.C.A. § 11706(a).
- <sup>3</sup> 49 U.S.C.A. § 11706(a).
- <sup>4</sup> 49 U.S.C.A. § 11706(b).
- <sup>5</sup> 49 U.S.C.A. § 11706(d)(1).
- <sup>6</sup> 49 U.S.C.A. § 11706(d)(2)(A).

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## 13 Am. Jur. 2d Carriers § 76

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### Carriers

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### d. Enforcement

### (2) Damages

## § 76. Liability of rail carriers under receipts and bills of lading—Limitation of liability

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  19, 35, 36

A rail carrier may not limit or be exempt from liability under a receipt or bill of lading, except as provided by statute,<sup>1</sup> and a limitation of liability of the amount of recovery or such a representation or agreement in a receipt, bill of lading, contract, or rule in violation of the statute is void.<sup>2</sup>

A rail carrier may not provide by rule, contract, or otherwise, a period of less than nine months for filing a claim against it and a period of less than two years for bringing a civil action against it.<sup>3</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 11706(c)(1), referring to the limitations of liability provided in 49 U.S.C.A. § 11706(c)(2) for loss or injury to passenger baggage and 49 U.S.C.A. § 11706(c)(3) which acknowledges limitations by written declaration of the shipper or written agreement between the shipper and the carrier.  
A shipper did not constructively accept a rail carrier's limitation of liability, as would support the carrier's claim to limit its liability for damage to cargo resulting from a train derailment to \$25,000 per car, where the shipper did not draft the bill of lading and was not offered an opportunity to declare the full value of the cargo; rather, the shipper merely inputted information into a bill of lading form located on the carrier's website, and the purported offer of full protection under the statute was not included in the bill of lading or the carrier's price quotes. [Chartis Seguros Mexico](#),

[S.A. de C.V. v. HLI Rail & Rigging, LLC](#), 3 F. Supp. 3d 171 (S.D. N.Y. 2014).

<sup>2</sup> [49 U.S.C.A. § 11706\(c\)\(1\)](#).

<sup>3</sup> [49 U.S.C.A. § 11706\(e\)](#).  
As to the limitations periods for claims relating to undercharges or overcharges, see §§ [170](#), [186](#).

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

#### C. Federal Regulation

#### 3. Regulation of Rail Carriers

##### d. Enforcement

##### (2) Damages

## § 77. Liability when property is delivered in violation of routing instructions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  19, 35, 36

When a rail carrier providing transportation subject to the jurisdiction of the Surface Transportation Board diverts or delivers property to another rail carrier in violation of the routing instructions in the bill of lading, both of those rail carriers are jointly and severally liable to the rail carrier that was deprived of its right to participate in hauling that property for the total amount of the rate it would have received if it participated in hauling the property.<sup>1</sup> However, a rail carrier is not liable when it diverts or delivers property in compliance with a Board order or regulation.<sup>2</sup>

A rail carrier to whom property is transported is not liable if it shows that it did not have notice of the routing instructions before transporting the property, but the burden of proving the lack of notice is on that rail carrier.<sup>3</sup>

A court must award a reasonable attorney's fee to the plaintiff in a judgment against a defendant rail carrier, taxed and collected as a part of the costs of the action.<sup>4</sup>

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### Footnotes

<sup>1</sup> [49 U.S.C.A. § 11707\(a\)\(1\)](#).

<sup>2</sup> 49 U.S.C.A. § 11707(a)(2).

<sup>3</sup> 49 U.S.C.A. § 11707(a)(3).

<sup>4</sup> 49 U.S.C.A. § 11707(b).

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### d. Enforcement

### (2) Damages

## § 78. Action to enforce award by STB

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  [18\(3\)](#), [19](#), [34](#), [36](#)

### Treatises and Practice Aids

As to enforcement of Surface Transportation Board actions, generally, see Federal Procedural Forms, Railroads  
[\[Westlaw®\(r\): Search Query\]](#)

When the Surface Transportation Board (STB) orders a rail carrier to pay damages to a person, that person may bring a civil action to enforce that order if the rail carrier does not pay the amount awarded by the date payment was ordered to be made.<sup>1</sup> The text of the Board order must be included in the complaint, and the findings and order of the Board are competent evidence of the facts stated in them.<sup>2</sup>

A civil action must be brought within one year after the date the order required that the money be paid,<sup>3</sup> although this period is extended when the transportation in question is for or on behalf of the United States government.<sup>4</sup>



Footnotes

- <sup>1</sup> 49 U.S.C.A. § 11704(c)(2).  
As to civil actions for overcharges and unreasonable rates, see §§ 178 to 195.
- <sup>2</sup> 49 U.S.C.A. § 11704(d)(1).
- <sup>3</sup> 49 U.S.C.A. § 11705(e).
- <sup>4</sup> 49 U.S.C.A. § 11705(f).

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 3. Regulation of Rail Carriers

### d. Enforcement


### (3) Penalties

### (a) Civil Penalties

## § 79. Rail carrier's liability for civil penalty, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  20(1), 37(1)

A rail carrier providing transportation subject to the jurisdiction of the Surface Transportation Board, an officer or agent of that rail carrier, or a receiver, trustee, lessee, or agent of one of them which knowingly violates the federal statutes governing rail carriers,<sup>1</sup> or an order of the Board promulgated under those statutes, is liable to the United States government for a civil penalty for each violation.<sup>2</sup> Liability is incurred for each distinct violation, and a separate violation occurs for each day the violation continues.<sup>3</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. §§ 10101 to 11908.

<sup>2</sup> 49 U.S.C.A. § 11901(a).  
As to the particular civil penalties provided for, see § 80.

<sup>3</sup> 49 U.S.C.A. § 11901(a).

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### Part One. In General

#### III. Regulation and Control of Carrier's Operations

##### C. Federal Regulation

##### 3. Regulation of Rail Carriers

##### d. Enforcement

##### (3) Penalties

##### (a) Civil Penalties

## § 80. Rail carrier's civil liability for particular violations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  20(1), 37(1)

Civil penalties are provided for:

- violating a regulation or order of the Surface Transportation Board relating to war emergencies<sup>1</sup> or other situations requiring immediate action to serve the public<sup>2</sup>
- violating a regulation or order of the Board to disregard an embargo imposed by a rail carrier, where the shipment is consigned to an agent of the United States government for its use<sup>3</sup>
- knowingly authorizing, consenting to, or permitting a violation of the statutes relating to the construction and operation of rail lines, short line purchases, abandonment of rail lines and discontinuance of service, or of a requirement or a regulation issued under those statutes<sup>4</sup>

Additionally, the following actions are subject to civil penalty, and a separate violation occurs for each day the violation continues of:<sup>5</sup>

- not making, preparing, preserving, or submitting to the Board a required record<sup>6</sup>
- violating the statute governing the inspection and examination of the lands, buildings, and equipment of a rail carrier or lessor<sup>7</sup>
- failing to make a required report to the Board, or not answering a question of the Board, or not specifically, completely, and truthfully answering a question<sup>8</sup>

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Footnotes

<sup>1</sup> 49 U.S.C.A. § 11901(b), (d).

<sup>2</sup> 49 U.S.C.A. § 11901(d).

<sup>3</sup> 49 U.S.C.A. § 11901(b).

<sup>4</sup> 49 U.S.C.A. § 11901(c).

<sup>5</sup> 49 U.S.C.A. § 11901(e)(4).

<sup>6</sup> 49 U.S.C.A. § 11901(e)(1).

<sup>7</sup> 49 U.S.C.A. § 11901(e)(2).

<sup>8</sup> 49 U.S.C.A. § 11901(e)(3).

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### Part One. In General

#### III. Regulation and Control of Carrier's Operations

##### C. Federal Regulation

##### 3. Regulation of Rail Carriers

##### d. Enforcement


##### (3) Penalties

##### (b) Criminal Penalties

## § 81. General rail carrier criminal penalty

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  21(1), 38(1)

A criminal penalty is prescribed by statute where no other criminal penalty has been established for the specific violation and a rail carrier providing transportation subject to the jurisdiction of the Surface Transportation Board, a director or officer of a corporate carrier, or a receiver, trustee, lessee, or person acting for or employed by the corporation that alone or with another person willfully violates a federal statute governing rail carriers<sup>1</sup> or an order prescribed under such statute.<sup>2</sup> A separate violation occurs each day a violation continues.<sup>3</sup>

The criminal penalties provided regarding rail carriers<sup>4</sup> are the exclusive criminal penalties for violations of the rail carrier statutes,<sup>5</sup> notwithstanding a provision of the United States Criminal Code<sup>6</sup> regarding sentences and fines.<sup>7</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. §§ 10101 to 11908.

<sup>2</sup> 49 U.S.C.A. § 11906.  
As to particular rail carrier criminal violations, see § 82.

<sup>3</sup> 49 U.S.C.A. § 11906.

<sup>4</sup> 49 U.S.C.A. §§ 11901 to 11908.

<sup>5</sup> 49 U.S.C.A. §§ 10101 to 11908.

<sup>6</sup> 18 U.S.C.A. § 3571.

<sup>7</sup> 49 U.S.C.A. § 11908.

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### Part One. In General

#### III. Regulation and Control of Carrier's Operations

##### C. Federal Regulation

##### 3. Regulation of Rail Carriers

##### d. Enforcement

##### (3) Penalties

##### (b) Criminal Penalties

## § 82. Particular rail carrier criminal violations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  21(1), 22, 38(1), 38(8)

Criminal penalties in regard to rail carriers are prescribed for:

- a person that offers or gives anything of value to another person acting for or employed by a rail carrier under the jurisdiction of the Surface Transportation Board intending to influence an action of that other person related to the supply, distribution, or movement of cars, vehicles, or vessels used in the transportation of property, or because of the action of the other person<sup>1</sup>
- a person acting for or employed by a rail carrier providing transportation subject to the jurisdiction of the Board that solicits, accepts, or receives anything of value intending to be influenced by it in an action of that person related to supply, distribution, or movement of cars, vehicles, or vessels used in the transportation of property, or because of the action of that person<sup>2</sup>
- violating recordkeeping and reporting requirements<sup>3</sup>
- the unlawful disclosure or receipt of certain information<sup>4</sup>
- the failure to obey a subpoena or requirement of the Board to appear and testify or produce records<sup>5</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 11902(a).



<sup>2</sup> 49 U.S.C.A. § 11902(b).

<sup>3</sup> 49 U.S.C.A. § 11903.

<sup>4</sup> 49 U.S.C.A. § 11904.

<sup>5</sup> 49 U.S.C.A. § 11905.

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

#### C. Federal Regulation

#### 3. Regulation of Rail Carriers

##### d. Enforcement

##### (3) Penalties

##### (b) Criminal Penalties

## § 83. Punishment of corporation for violations by individuals

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  21(1), 38(1), 38(8)

An act or omission that is a violation of the federal statutes governing rail carriers,<sup>1</sup> if committed by a director, officer, receiver, trustee, lessee, agent, or employee of a rail carrier providing transportation or service subject to the jurisdiction of the Surface Transportation Board that is a corporation, is also a violation by that corporation.<sup>2</sup> The criminal penalties provided regarding rail carriers<sup>3</sup> thus apply to that violation.<sup>4</sup>

When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by a rail carrier are considered the actions and omissions of the rail carrier as well as of the individual.<sup>5</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. §§ 10101 to 11908.

<sup>2</sup> 49 U.S.C.A. § 11907.

<sup>3</sup> 49 U.S.C.A. §§ 11901 to 11908.

<sup>4</sup> 49 U.S.C.A. § 11907.

<sup>5</sup> 49 U.S.C.A. § 11907.

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 4. Regulation of Motor Carriers, Water Carriers, Brokers, and Freight Forwarders

### a. In General

## § 84. Authority and jurisdiction to regulate motor carriers, water carriers, brokers, and freight forwarders

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10

Except as otherwise specified, the Secretary of Transportation is charged with implementing the federal statutes governing motor carriers, water carriers, brokers, and freight forwarders.<sup>1</sup> The Secretary is authorized to prescribe regulations,<sup>2</sup> obtain information from carriers,<sup>3</sup> and subpoena witnesses and records.<sup>4</sup>

The Interstate Commerce Commission Termination Act (ICCTA) defines the jurisdiction of the Secretary and the Surface Transportation Board with respect to motor carriers,<sup>5</sup> water carriers,<sup>6</sup> and freight forwarders.<sup>7</sup>

Except to the extent the Secretary or the Board finds it necessary to exercise jurisdiction to carry out the federal transportation policy with respect to motor carriers, neither has jurisdiction over:

- with certain exceptions, transportation provided entirely in a municipality, in contiguous municipalities, or in a zone that is adjacent to and commercially a part of the municipalities<sup>8</sup>
- with certain exceptions, transportation by motor vehicle provided casually, occasionally, or reciprocally<sup>9</sup>
- the emergency towing of an accidentally wrecked or disabled motor vehicle<sup>10</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 13301(a).

- 2            49 U.S.C.A. § 13301(a).
- 3            49 U.S.C.A. § 13301(b).
- 4            49 U.S.C.A. § 13301(c).
- 5            49 U.S.C.A. § 13501.
- 6            49 U.S.C.A. § 13521(a).
- 7            49 U.S.C.A. § 13531(a).
- 8            49 U.S.C.A. § 13506(b)(1).
- 9            49 U.S.C.A. § 13506(b)(2).
- 10          49 U.S.C.A. § 13506(b)(3).

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### Part One. In General

#### III. Regulation and Control of Carrier's Operations

##### C. Federal Regulation

#### 4. Regulation of Motor Carriers, Water Carriers, Brokers, and Freight Forwarders

##### a. In General

## § 85. Authority and jurisdiction to regulate motor carriers, water carriers, brokers, and freight forwarders—Particular subjects

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#) 🔑10

### A.L.R. Library

[Construction and Application of Truth-in-Leasing Regulations, 49 C.F.R. ss376.1 et seq., Under Motor Carrier Act, 49 U.S.C.A. ss14101, 14102, 14704, 74 A.L.R. Fed. 2d 521](#)

### Forms

Forms relating to request for delivery of goods without surrender of document, see Am. Jur. Legal Forms 2d, Uniform Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

The Secretary of Transportation has the authority to:

- impose certain requirements applying to a motor carrier that uses motor vehicles not owned by it to transport property

- under an arrangement with another party<sup>1</sup>
- issue regulations governing the interstate transportation of household goods by motor carriers including performance standards<sup>2</sup>
  - prescribe the form of records required to be prepared or compiled<sup>3</sup>
  - require financial, safety, operations, and other reports<sup>4</sup>

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Footnotes

<sup>1</sup> 49 U.S.C.A. § 14102(a).

<sup>2</sup> 49 U.S.C.A. § 14104(a).

<sup>3</sup> 49 U.S.C.A. § 14122 (also granting this authority to the Surface Transportation Board, as applicable).

<sup>4</sup> 49 U.S.C.A. § 14123(a).

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## 13 Am. Jur. 2d Carriers § 86

American Jurisprudence, Second Edition | May 2021 Update

### Carriers

George L. Blum, J.D.; John Bourdeau, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Jill Gustafson, J.D.; Karl Oakes, J.D.; Lucas Martin, J.D.; and Jeffrey J. Shampo, J.D.

### Part One. In General

#### III. Regulation and Control of Carrier's Operations

##### C. Federal Regulation

#### 4. Regulation of Motor Carriers, Water Carriers, Brokers, and Freight Forwarders

##### a. In General

## § 86. Authority and jurisdiction to regulate motor carriers, water carriers, brokers, and freight forwarders—Authority of Secretary or STB to exempt from regulation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10

The Secretary of Transportation or the Surface Transportation Board (STB), as applicable, is required to exempt a person, class of persons, or a transaction or service from the application, in whole or in part, of a provision of the statutes governing motor carriers, water carriers, brokers, and freight forwarders, or use this exemption authority to modify the application of a provision of those statutes when the Secretary or Board finds that the application of that provision:<sup>1</sup>

- (1) is not necessary to carry out the federal transportation policy;<sup>2</sup>
- (2) is not needed to protect shippers from abuse of market power or that the transaction or service is of limited scope; and
- (3) is in the public interest.

This exemption authority may not be used to relieve a person from the application of, and compliance with, any law, rule, regulation, standard, or order pertaining to cargo loss and damage, insurance, safety fitness, or other activities approved by statute.<sup>3</sup> Moreover, the Secretary or Board may not exempt a water carrier from the application of or compliance with the statutory requirements for (1) reasonable rates, classifications, through routes, rules, and practices; or (2) tariffs for transportation in the noncontiguous domestic trade.<sup>4</sup>

The Secretary or Board cannot regulate or exercise jurisdiction over the transportation by water carrier in the noncontiguous domestic trade of any cargo or type of cargo or service which was not subject to regulation by, or under the jurisdiction of, either the Federal Maritime Commission or Interstate Commerce Commission under federal law in effect on November 1, 1995.<sup>5</sup>



The Secretary may exempt, upon good cause shown, any party from the financial reporting requirements.<sup>6</sup>

The Secretary must allow, upon request, a filer of a financial, safety, operations, or other report that is not a publicly held corporation or that is not subject to the financial reporting requirements of the Securities and Exchange Commission, an exemption from the public release of such report.<sup>7</sup>

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#### Footnotes

- <sup>1</sup> 49 U.S.C.A. § 13541(a).  
As to the procedures, time limit and revocation of an exemption, see 49 U.S.C.A. § 13541(b) to (d).
- <sup>2</sup> 49 U.S.C.A. § 13101.
- <sup>3</sup> 49 U.S.C.A. § 13541(e)(1).
- <sup>4</sup> 49 U.S.C.A. § 13541(e)(2).
- <sup>5</sup> 49 U.S.C.A. § 13541(f).
- <sup>6</sup> 49 U.S.C.A. § 14123(c)(1).
- <sup>7</sup> 49 U.S.C.A. § 14123(c)(2)(A).

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## 13 Am. Jur. 2d Carriers § 87

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### Carriers

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## § 87. Statutory exemptions for motor carriers and freight forwarders

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 24

To the extent that transportation by a motor carrier between a place in Alaska and a place in another state is provided in a foreign country, neither the Secretary of Transportation nor the Surface Transportation Board has jurisdiction to impose a requirement over conduct of the motor carrier in the foreign country conflicting with a requirement of that country.<sup>1</sup> However, the motor carrier must comply, with respect to all transportation provided between Alaska and the other state, with the federal statutory requirements related to rates and practices applicable to the transportation.<sup>2</sup>

There are also motor carrier exemptions relating to:

- service by motor carriers in a terminal area<sup>3</sup>
- transportation (except of household goods) by a motor carrier operating solely within Hawaii<sup>4</sup>
- transportation furthering a primary business other than transportation<sup>5</sup>
- a motor vehicle transporting only school children and teachers to or from school<sup>6</sup>
- taxicabs<sup>7</sup>
- a motor vehicle owned or operated by or for a hotel and only transporting hotel patrons between the hotel and the local station of a carrier<sup>8</sup>
- farm vehicles, including those transporting commodities<sup>9</sup>
- newspaper distribution vehicles<sup>10</sup>
- transportation of passengers by motor vehicle incidental to transportation by aircraft; transportation of property as part of a continuous movement which property has been or will be transported by an air carrier; and transportation of property in lieu of transportation by aircraft because of causes beyond the shipper's control<sup>11</sup>
- operation of a motor vehicle in a national park or monument<sup>12</sup>

- daily commuter vehicles, with certain passenger limits<sup>13</sup>
- transportation of used pallets and shipping containers and other certain used shipping devices,<sup>14</sup> decorative rock,<sup>15</sup> wood chips,<sup>16</sup> and broken, crushed, or powdered glass<sup>17</sup>
- brokers for motor carriers of passengers<sup>18</sup>
- youth or family camp motor vehicles, with certain passenger limits<sup>19</sup>

An exemption is provided with respect to service undertaken by a freight forwarder using transportation of certain air carriers.<sup>20</sup>

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#### Footnotes

- <sup>1</sup> 49 U.S.C.A. § 13502(1).
- <sup>2</sup> 49 U.S.C.A. § 13502(2).
- <sup>3</sup> 49 U.S.C.A. § 13503.
- <sup>4</sup> 49 U.S.C.A. § 13504.
- <sup>5</sup> 49 U.S.C.A. § 13505.
- <sup>6</sup> 49 U.S.C.A. § 13506(a)(1).
- <sup>7</sup> 49 U.S.C.A. § 13506(a)(2).
- <sup>8</sup> 49 U.S.C.A. § 13506(a)(3).
- <sup>9</sup> 49 U.S.C.A. § 13506(a)(4) to (6).
- <sup>10</sup> 49 U.S.C.A. § 13506(a)(7).
- <sup>11</sup> 49 U.S.C.A. § 13506(a)(8).
- <sup>12</sup> 49 U.S.C.A. § 13506(a)(9).
- <sup>13</sup> 49 U.S.C.A. § 13506(a)(10).
- <sup>14</sup> 49 U.S.C.A. § 13506(a)(11).
- <sup>15</sup> 49 U.S.C.A. § 13506(a)(12).
- <sup>16</sup> 49 U.S.C.A. § 13506(a)(13).
- <sup>17</sup> 49 U.S.C.A. § 13506(a)(15).
- <sup>18</sup> 49 U.S.C.A. § 13506(a)(14).
- <sup>19</sup> 49 U.S.C.A. § 13506(a)(16).
- <sup>20</sup> 49 U.S.C.A. § 13531(b).

## 13 Am. Jur. 2d Carriers § 88

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###### a. In General

## § 88. Preemption of state regulation of motor carriers of passengers

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### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  24

### A.L.R. Library

[Preemptive Effect of Federal Aviation Administration Authorization Act, 49 U.S.C.A. ss14501\(c\), 41713\(b\)\(4\), 29 A.L.R. Fed. 2d 563](#)

A state, political subdivision of a state, or an interstate agency or other political agency of two or more states may not enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to (1) scheduling of interstate or intrastate transportation (including the discontinuance or reduction in the level of service) provided on an interstate route by a motor carrier of passengers governed by the federal statutes; (2) the implementation of any change in the rates for such transportation or for any charter transportation, except to the extent that notice, not in excess of 30 days, of changes in schedules may be required; or (3) the authority to provide intrastate or interstate charter bus transportation.<sup>1</sup> However, the described provision does not restrict the safety regulatory authority of a state with respect to motor vehicles, the authority of a state to impose highway route controls or limitations based on the size or weight of the motor vehicle, or the authority of a state to regulate carriers with regard to minimum amounts of insurance requirements and self-insurance authorization.<sup>2</sup>

No state, political subdivision of a state, and no interstate agency or other political agency of two or more states can enact or

enforce any law, rule, regulation, standard or other provision having the force and effect of law requiring a license or fee on account of the fact that a motor vehicle is providing prearranged ground transportation service if the motor carrier providing such service:<sup>3</sup>

- (1) meets all applicable registration requirements for the interstate transportation of passengers;
- (2) meets all applicable vehicle and intrastate passenger licensing requirements of the state or states in which the motor carrier is domiciled or registered to do business; and
- (3) is providing such service pursuant to a contract for transportation by the motor carrier from one state, including intermediate stops, to a destination in the original state or another state.

Nothing in the above provision regarding prearranged ground transportation service will be construed as subjecting taxicab service to regulation; as prohibiting or restricting an airport, train, or bus terminal operator from contracting to provide preferential access or facilities to one or more providers of prearranged ground transportation service; and as restricting the right of any state or political subdivision of a state to require, in a nondiscriminatory manner, that any individual operating a vehicle providing prearranged ground transportation service originating in the state or political subdivision have submitted to preclicensing drug testing or a criminal background investigation of the records of the state in which the operator is domiciled, by the state or political subdivision by which the operator is licensed to provide such service, or by the motor carrier providing such service, as a condition of providing such service.<sup>4</sup>

A state or political subdivision of a state may not collect or levy a tax, fee, head charge, or other charge on:<sup>5</sup>

- (1) a passenger traveling in interstate commerce by motor carrier;
- (2) the transportation of a passenger traveling in interstate commerce by motor carrier;
- (3) the sale of passenger transportation in interstate commerce by motor carrier; or
- (4) a gross receipt derived from such transportation.

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#### Footnotes

<sup>1</sup> 49 U.S.C.A. § 14501(a)(1) (also providing that it does not apply to intrastate commuter bus operations or to intrastate bus transportation of any nature in Hawaii).

In the absence of federal legislation defining what is a bus and the lack of a common definition, a federal court may rely on a state statute defining a charter bus as a vehicle having a minimum passenger capacity of 32 passengers, and thus, 49 U.S.C.A. § 14501(a)(1) only preempts the state's authority to regulate bus transportation meeting that definition. *Alex's Transp., Inc. v. Colorado Public Utilities Com'n*, 88 F. Supp. 2d 1147 (D. Colo. 2000), judgment aff'd, 242 F.3d 387 (10th Cir. 2000).

<sup>2</sup> 49 U.S.C.A. § 14501(a)(2).

<sup>3</sup> 49 U.S.C.A. § 14501(d)(1).  
As to the definition of "intermediate stop," see 49 U.S.C.A. § 14501(d)(2).

<sup>4</sup> 49 U.S.C.A. § 14501(d)(3).

<sup>5</sup> 49 U.S.C.A. § 14505.

## 13 Am. Jur. 2d Carriers § 89

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### Carriers

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## § 89. Preemption of state regulation of motor carriers of property and freight forwarders

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### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  24

### A.L.R. Library

[Preemptive Effect of Federal Aviation Administration Authorization Act, 49 U.S.C.A. ss14501\(c\), 41713\(b\)\(4\), 29 A.L.R. Fed. 2d 563](#)

A state, political subdivision of a state, or political authority of two or more states may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier with respect to the transportation of property.<sup>1</sup> However, the described provision does not restrict the safety regulatory authority of a state with respect to motor vehicles, the authority of a state to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a state to regulate carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization.<sup>2</sup> Additionally, the above provision is inapplicable with respect to the State of Hawaii.<sup>3</sup>

In deregulating trucking, the federal statute preempts enforcement actions and laws having a connection with or reference to carrier rates, routes, or services,<sup>4</sup> which also concern a motor carrier's transportation of property,<sup>5</sup> and preemption occurs where state laws have a significant impact related to Congress's objectives.<sup>6</sup>

The trucking provision is also inapplicable to (1) the transportation of household goods,<sup>7</sup> and (2) to the authority of a state or a political subdivision to enact or enforce a law, regulation, or other provision relating to the price of for-hire motor vehicle transportation by a tow truck if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.<sup>8</sup> The latter means that ordinances relating to the route, service, and price of consensual towing services are preempted,<sup>9</sup> and the constitutionality of Congress doing so has been upheld.<sup>10</sup>

In addition, the federal statute does not affect any authority of a state, political subdivision of a state, or a political authority of two or more states to enact or enforce a law, regulation, or other provision with respect to the intrastate transportation of property by motor carriers related to uniform cargo liability rules, uniform bills of lading or receipts for property being transported, uniform cargo credit rules, antitrust immunity for joint line rates or routes, classifications, mileage guides, and pooling or antitrust immunity for agent-van line operations, if that law<sup>11</sup> (1) covers the same subject matter as and the compliance with that law is no more burdensome than compliance with a provision of the federal statutes governing motor carriers or a regulation issued under it, and (2) it only applies to a carrier on the carrier's request.<sup>12</sup> A carrier affiliated with a direct air carrier through common controlling ownership may elect to be subject to a law, regulation, or provision of a state, political subdivision, or political authority.<sup>13</sup>

No state, political subdivision of a state, and no intrastate agency or other political agency of two or more states can enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to intrastate rates, intrastate routes, or intrastate services of any freight forwarder or broker.<sup>14</sup> Nothing in this provision affects the State of Hawaii's authority to continue to regulate motor carriers within the state.<sup>15</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Trucking company that coordinated pickup and delivery of online retailer's shipments with carrier was a broker within the meaning of the Federal Aviation and Administration Authorization Act (FAAAA), such that state law claims against company asserted by family of motorist who died in accident with box truck carrying retailer's shipment, fell within scope of FAAAA's preemption provision; Federal Motor Carrier Safety Administration (FMCSA) had issued broker authority to trucking company, and complaint's allegations identified that a broker-carrier arrangement existed between the parties. [49 U.S.C.A. § 14501\(c\)\(1\)](#). [Lopez v. Amazon Logistics, Inc.](#), 458 F. Supp. 3d 505 (N.D. Tex. 2020).

## [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [49 U.S.C.A. § 14501\(c\)\(1\)](#).  
A vehicle owner's claims, that a towing company violated state law by towing his vehicle and later trading it to a third party without complying with the requirements of the state statutes governing the disposal of abandoned vehicles by a storage company, did not relate to the "transportation" of property, as required for the owner's claims to be preempted, where the owner did not object to the manner in which his car was moved or the price of the tow, but instead, he sought redress only for conduct occurring after the car ceased moving and was stored. [Dan's City Used Cars, Inc. v. Pelkey](#), 569 U.S. 251, 133 S. Ct. 1769, 185 L. Ed. 2d 909 (2013).  
Mixed solid waste is not "property" within the meaning the statute; thus, a city and county could regulate hauling it. [AGG Enterprises v. Washington County](#), 281 F.3d 1324 (9th Cir. 2002).
- <sup>2</sup> [49 U.S.C.A. § 14501\(c\)\(2\)\(A\)](#).  
In the context of determining whether a city's permit scheme for tow trucks and tow truck firms was preempted, the safety exception to the federal statute's express preemption clause was not limited to regulations related to the "motor

vehicle safety” of the tow trucks themselves but covered regulations seeking to prevent or mitigate the danger a person experienced when his or her motor vehicle was being or had been towed. [California Tow Truck Ass’n v. City and County of San Francisco](#), 807 F.3d 1008 (9th Cir. 2015).

3 49 U.S.C.A. § 14501(c)(4).

4 [Rowe v. New Hampshire Motor Transport Ass’n](#), 552 U.S. 364, 128 S. Ct. 989, 169 L. Ed. 2d 933, 29 A.L.R. Fed. 2d 783 (2008).

Parking and placard provisions of a municipal port concession agreement that trucking companies had to sign before they could transport cargo at a city’s port, which required, respectively, that such companies develop off-street parking plans and display designated placards on their vehicles, were expressly preempted, where the port exercised classic regulatory authority in imposing the requirements, complete with the use of criminal penalties for terminal operators that permitted access to trucks that were not registered under a concession agreement. [American Trucking Associations, Inc. v. City of Los Angeles, Cal.](#), 569 U.S. 641, 133 S. Ct. 2096, 186 L. Ed. 2d 177 (2013).

5 [Dan’s City Used Cars, Inc. v. Pelkey](#), 569 U.S. 251, 133 S. Ct. 1769, 185 L. Ed. 2d 909 (2013).

6 [Rowe v. New Hampshire Motor Transport Ass’n](#), 552 U.S. 364, 128 S. Ct. 989, 169 L. Ed. 2d 933, 29 A.L.R. Fed. 2d 783 (2008) (invalidating a state tobacco delivery law which required that a shipper utilize a delivery service that verified the buyer’s legal age; even though it was directed to shippers rather than carriers, it had an adverse impact on carriers by requiring that they provide certain services; also finding that there was not a “public health” or “tobacco” exception).

State meal and rest break laws were not “related to” prices, routes, or services of a motor carrier with respect to the transportation of property and thus were not preempted, where the laws did not set prices, mandate or prohibit certain routes, or tell motor carriers what services they could or could not provide, but rather were broad laws applying to hundreds of different industries, and applying the laws would not contribute to an impermissible patchwork of state-specific laws, so as to defeat Congress’ deregulatory objectives. [Dilts v. Penske Logistics, LLC](#), 769 F.3d 637 (9th Cir. 2014).

7 49 U.S.C.A. § 14501(c)(2)(B).

8 49 U.S.C.A. § 14501(c)(2)(C).

9 [Cedar Bluff 24-Hour Towing, Inc. v. City of Knoxville](#), 78 F. Supp. 2d 725 (E.D. Tenn. 1999).

10 [Ace Auto Body & Towing, Ltd. v. City of New York](#), 171 F.3d 765 (2d Cir. 1999) (holding modified on other grounds by, [Loyal Tire & Auto Center, Inc. v. Town of Woodbury](#), 445 F.3d 136 (2d Cir. 2006)).

11 49 U.S.C.A. § 14501(c)(3)(A).

12 49 U.S.C.A. § 14501(c)(3)(B).

13 49 U.S.C.A. § 14501(c)(3)(C).

14 49 U.S.C.A. § 14501(b)(1).

15 49 U.S.C.A. § 14501(b)(2).



## 13 Am. Jur. 2d Carriers § 90

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### a. In General

## § 90. Preemption of state regulation requiring vehicle identification

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  24

With certain exceptions, no state, political subdivision of a state, interstate agency, or other political agency of two or more states may enact or enforce any law, rule, regulation standard, or other provision having the force and effect of law that requires a motor carrier, motor private carrier, freight forwarder, or leasing company to display any form of identification on or in a commercial motor vehicle, other than forms of identification required by the Secretary of Transportation.<sup>1</sup>

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### Footnotes

<sup>1</sup> [49 U.S.C.A. § 14506.](#)

## 13 Am. Jur. 2d Carriers § 91

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### Carriers

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## § 91. Obligation of carrier to provide service

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

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[Construction and Application of Truth-in-Leasing Regulations, 49 C.F.R. ss376.1 et seq., Under Motor Carrier Act, 49 U.S.C.A. ss14101, 14102, 14704, 74 A.L.R. Fed. 2d 521](#)

A motor carrier, water carrier, or freight forwarder engaged in interstate transportation subject to the jurisdiction of the Secretary of Transportation and Surface Transportation Board<sup>1</sup> must provide the transportation or service on reasonable request.<sup>2</sup> In addition, a motor carrier must provide safe and adequate service, equipment, and facilities.<sup>3</sup> Provision is made for the contractual waiver of certain statutory rights when the transportation does not involve the movement of household goods.<sup>4</sup>

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### Footnotes

<sup>1</sup> [§ 84.](#)

<sup>2</sup> [49 U.S.C.A. § 14101\(a\).](#)

<sup>3</sup> 49 U.S.C.A. § 14101(a).

<sup>4</sup> 49 U.S.C.A. § 14101(b).

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## 13 Am. Jur. 2d Carriers § 92

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## § 92. Pooling or division of transportation or earnings

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  29

A motor carrier, water carrier, or freight forwarder providing interstate transportation subject to the jurisdiction of the Secretary of Transportation and Surface Transportation Board<sup>1</sup> may not agree or combine with another such carrier to pool or divide traffic or services or any part of their earnings, without the approval of the Board.<sup>2</sup>

However, the Board may approve and authorize an agreement or combination between or among motor carriers of passengers, or between a motor carrier of passengers and a rail carrier of passengers if the carriers involved assent to the pooling or division and the Board finds that a pooling or division of traffic, services, or earnings will be in the interest of better service to the public or of economy of operation and will not unreasonably restrain competition.<sup>3</sup>

The Board may impose conditions governing the pooling or division and may approve and authorize the payment of reasonable consideration between the carriers.<sup>4</sup>

A carrier may participate in an arrangement approved by or exempted by the Board without the approval of any other federal, state, or municipal body and is exempt from the antitrust laws and from all other law, including state and municipal law, as necessary to allow that person to implement the arrangement.<sup>5</sup>

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### Footnotes

<sup>1</sup> § 84.

<sup>2</sup> 49 U.S.C.A. § 14302(a).  
As to the procedure to apply to the Board for approval, see 49 U.S.C.A. § 14302(c).

<sup>3</sup> 49 U.S.C.A. § 14302(b).

<sup>4</sup> 49 U.S.C.A. § 14302(d).

<sup>5</sup> 49 U.S.C.A. § 14302(f).

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## 13 Am. Jur. 2d Carriers § 93

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### Carriers

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### Part One. In General

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## § 93. Consolidation, merger, acquisition of control of passenger motor carrier

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### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  17

Certain consolidation, merger, purchase, lease, contract to operate, and acquisition of control transactions involving motor carriers of passengers engaged in interstate transportation subject to the jurisdiction of the Secretary of Transportation and Surface Transportation Board<sup>1</sup> may be implemented only with the approval of the Board,<sup>2</sup> which is required to approve them when it finds that the transaction is consistent with the public interest after considering certain factors.<sup>3</sup> The Board may impose conditions governing the transaction.<sup>4</sup> Approval of a state authority is not necessary, and the entity is exempt from antitrust and other laws to the extent necessary to complete the transaction and exercise the franchises acquired through it.<sup>5</sup>

Carriers whose aggregate gross operating revenues are less than an amount fixed by statute are exempt from the Board approval requirement.<sup>6</sup>

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### Footnotes

<sup>1</sup> § 84.

<sup>2</sup> 49 U.S.C.A. § 14303(a).

<sup>3</sup> 49 U.S.C.A. § 14303(b).

<sup>4</sup> 49 U.S.C.A. § 14303(b).

<sup>5</sup> 49 U.S.C.A. § 14303(f).

<sup>6</sup> 49 U.S.C.A. § 14303(g).

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## 13 Am. Jur. 2d Carriers § 94

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### Carriers

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## § 94. Investigative power of Secretary or STB

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10

The Secretary of Transportation or the Surface Transportation Board (STB), as applicable, may begin an investigation on the Secretary's or the Board's own initiative or on a complaint, and the Secretary or Board may take the appropriate action to compel compliance.<sup>1</sup>

A person, including a governmental authority, may file with the Secretary or Board, as applicable, a complaint about a violation of the statutes regulating motor carriers, water carriers, brokers, and freight forwarders,<sup>2</sup> which must state the facts that are the subject of the violation.<sup>3</sup> The Secretary or Board will dismiss a complaint if it does not state reasonable grounds for investigation and action.<sup>4</sup> A formal investigative proceeding begun by the Secretary or Board is dismissed automatically unless it is concluded with administrative finality by the end of the third year after the date on which it was commenced.<sup>5</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 14701(a).

<sup>2</sup> 49 U.S.C.A. §§ 13101 to 14916.

<sup>3</sup> 49 U.S.C.A. § 14701(b).



<sup>4</sup> 49 U.S.C.A. § 14701(b).

<sup>5</sup> 49 U.S.C.A. § 14701(c).

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## 13 Am. Jur. 2d Carriers § 95

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### b. Liability and Enforcement

### (1) In General

## § 95. Initiation of civil action by Secretary or STB

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 34

The Secretary of Transportation or the Surface Transportation Board (STB), as applicable, may bring a civil action to enforce the statutes regulating motor carriers, water carriers, brokers, and freight forwarders,<sup>1</sup> or a regulation or order of the Secretary or Board under such statutes.<sup>2</sup>

The trial of such actions is in the judicial district in which the carrier, foreign motor carrier, foreign motor private carrier, or broker operates. Process may be served without regard to the territorial limits of the district or of the state in which the action is instituted. A person participating with a carrier or broker in a violation may be joined in the civil action without regard to the person's residence.<sup>3</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. §§ 13101 to 14916.

<sup>2</sup> 49 U.S.C.A. § 14702(a).

<sup>3</sup> 49 U.S.C.A. § 14702(b).

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### (1) In General

## § 96. Enforcement by attorney general

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  34

The attorney general may, and on request of either the Secretary of Transportation or the Surface Transportation Board must, bring court proceedings to enforce the federal statutes governing motor carriers, water carriers, brokers, and freight forwarders;<sup>1</sup> a regulation or order of the Secretary or Board; or the terms of registration under those statutes and prosecute a person violating such a statute, regulation, or order.<sup>2</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. §§ 13101 to 14916.

<sup>2</sup> 49 U.S.C.A. § 14703.

## 13 Am. Jur. 2d Carriers § 97

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 4. Regulation of Motor Carriers, Water Carriers, Brokers, and Freight Forwarders

### b. Liability and Enforcement

### (1) In General

## § 97. Enforcement by states of federal laws regarding transportation of household goods

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  34

A state authority may enforce the consumer protection provisions of the federal statutes governing transportation<sup>1</sup> that apply to individual shippers, as determined by the Secretary of Transportation, and are related to the delivery and transportation of household goods in interstate commerce.<sup>2</sup> “State authority” means an agency of a state that has authority under the laws of the state to regulate the intrastate movement of household goods.<sup>3</sup>

The state must serve written notice to the Secretary or the Surface Transportation Board, as the case may be, prior to initiating such civil action.<sup>4</sup>

Any fine or penalty imposed on a carrier through such proceeding must be paid to and retained by the state.<sup>5</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. §§ 101 et seq.

<sup>2</sup> 49 U.S.C.A. § 14710(a).

<sup>3</sup> 49 U.S.C.A. § 14710(d).

<sup>4</sup> 49 U.S.C.A. § 14710(b).

<sup>5</sup> 49 U.S.C.A. § 14710(a).

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### C. Federal Regulation

### 4. Regulation of Motor Carriers, Water Carriers, Brokers, and Freight Forwarders

### b. Liability and Enforcement

### (1) In General

## § 98. Enforcement by states of federal laws regarding transportation of household goods—States attorneys general

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  34

A state, as *parens patriae*, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enforce the consumer protection provisions of the federal statutes governing transportation<sup>1</sup> that apply to individual shippers, as determined by the Secretary of Transportation, and are related to the delivery and transportation of household goods by a household goods motor carrier subject to jurisdiction of the Secretary and the Surface Transportation Board<sup>2</sup> or regulations or orders of the Secretary or the Board issued under such provisions or to impose civil penalties, whenever the attorney general of the state has reason to believe that the interests of the residents of the state have been or are being threatened or adversely affected.<sup>3</sup>

The state must serve written notice to the Secretary or the Board, as the case may be, of the initiation of any such civil action.<sup>4</sup>

The Secretary or the Board, under certain circumstances, is either required<sup>5</sup> or has the option<sup>6</sup> to review the initiation of such civil action. The Secretary or the Board is considered to have consented to any such civil action of a state if the Secretary or the Board has taken no action with respect to the notice within 60 calendar days after the date on which notice was received.<sup>7</sup> Upon receiving notice, the Secretary or the Board may intervene in such civil action and be heard on all matters arising in such civil action and file petitions for appeal of a decision in such civil actions.<sup>8</sup>

Nothing under this provision will convey a right to initiate or maintain a class action lawsuit in the enforcement of a federal law or regulation or prevent the attorney general of a state from exercising the powers conferred on the attorney general to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.<sup>9</sup> Additionally, nothing in this provision will prohibit an authorized state official from proceeding in state court to enforce a criminal statute of the state.<sup>10</sup>

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#### Footnotes

- <sup>1</sup> 49 U.S.C.A. §§ 101 et seq.
- <sup>2</sup> § 84.
- <sup>3</sup> 49 U.S.C.A. § 14711(a).
- <sup>4</sup> 49 U.S.C.A. § 14711(b)(1).
- <sup>5</sup> 49 U.S.C.A. § 14711(b)(2)(A).
- <sup>6</sup> 49 U.S.C.A. § 14711(b)(2)(B).
- <sup>7</sup> 49 U.S.C.A. § 14711(b)(4).
- <sup>8</sup> 49 U.S.C.A. § 14711(c).
- <sup>9</sup> 49 U.S.C.A. § 14711(d).
- <sup>10</sup> 49 U.S.C.A. § 14711(f).

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## 13 Am. Jur. 2d Carriers § 99

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### Part One. In General

#### III. Regulation and Control of Carrier's Operations

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##### b. Liability and Enforcement

##### (2) Liability and Damages

## § 99. Rights and remedies of persons injured by carriers or brokers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  18(3), 18(6), 34

### A.L.R. Library

[Construction and Application of Truth-in-Leasing Regulations](#), 49 C.F.R. ss376.1 et seq., [Under Motor Carrier Act](#), 49 U.S.C.A. ss14101, 14102, 14704, 74 A.L.R. Fed. 2d 521

### Trial Strategy

[Reasonableness of Contingent Fee in Personal Injury Action](#), 157 Am. Jur. Proof of Facts 3d 111

**Forms**

Forms relating to request for delivery of goods without surrender of document, see Am. Jur. Legal Forms 2d, Uniform Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

A person injured because a motor carrier, water carrier, freight forwarder, or broker providing interstate transportation or service subject to the jurisdiction of the Secretary of Transportation or the Surface Transportation Board does not obey an order of the Secretary or the Board, as applicable, may bring a civil action to enforce that order, except an order for the payment of money.<sup>1</sup> Where the person is injured in relation to a leased vehicle,<sup>2</sup> the loading and unloading of motor vehicles,<sup>3</sup> or failure of the carrier to give up possession of household goods,<sup>4</sup> such person may bring a civil action for injunctive relief.<sup>5</sup> It is not necessary to first obtain an administrative order before filing the action,<sup>6</sup> and traditional equitable principles apply.<sup>7</sup> The district court is not permitted, under the statute, to order restitution and disgorgement as remedies for a carrier's past violations but is confined to the court's equitable powers to injunctive relief only.<sup>8</sup>

Attorney's fees are included as part of the costs in a private enforcement action,<sup>9</sup> but the context of that provision indicates that fees are to be awarded only to plaintiffs.<sup>10</sup>

**Observation:**

Except as otherwise provided, the statutory remedies described are in addition to remedies existing under another law or the common law.<sup>11</sup>

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**Footnotes**

- <sup>1</sup> 49 U.S.C.A. § 14704(a)(1).  
As to actions for monetary relief, see § 100.
- <sup>2</sup> 49 U.S.C.A. § 14102.
- <sup>3</sup> 49 U.S.C.A. § 14103.
- <sup>4</sup> 49 U.S.C.A. § 14915(c).
- <sup>5</sup> 49 U.S.C.A. § 14704(a)(1).
- <sup>6</sup> *Owner-Operator Independent Drivers Ass'n v. C.R. England, Inc.*, 325 F. Supp. 2d 1252 (D. Utah 2004).
- <sup>7</sup> *Owner Operator Independent Drivers Ass'n, Inc. v. Swift Transp. Co., Inc.* (AZ), 367 F.3d 1108 (9th Cir. 2004).
- <sup>8</sup> *Owner-Operator Independent Drivers Ass'n, Inc. v. Swift Transp. Co., Inc.* (AZ), 632 F.3d 1111, 74 A.L.R. Fed. 2d 687 (9th Cir. 2011).
- <sup>9</sup> 49 U.S.C.A. § 14704(e).
- <sup>10</sup> *Owner-Operator Independent Drivers Ass'n, Inc. v. New Prime, Inc.*, 398 F.3d 1067 (8th Cir. 2005); *Fulfillment*

Services Inc. v. United Parcel Service, Inc., 528 F.3d 614 (9th Cir. 2008).

<sup>11</sup> 49 U.S.C.A. § 13103.

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##### b. Liability and Enforcement

##### (2) Liability and Damages

## § 100. Rights and remedies of persons injured by carriers or brokers—Liability and damages for violations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  [19](#), [26](#), [34](#), [36](#)

### A.L.R. Library

[Construction and Application of Truth-in-Leasing Regulations, 49 C.F.R. ss376.1 et seq., Under Motor Carrier Act, 49 U.S.C.A. ss14101, 14102, 14704, 74 A.L.R. Fed. 2d 521](#)

### Treatises and Practice Aids

As to private enforcement of certain board orders, generally, see Federal Procedural Forms, Transportation [\[Westlaw®\(r\): Search Query\]](#)

A motor carrier, water carrier, freight forwarder, or broker providing interstate transportation or service subject to the

jurisdiction of the Secretary of Transportation or the Surface Transportation Board may be held liable for the damages sustained by a person as a result of an act or omission in violation of the applicable statutes.<sup>1</sup> Proof of actual damages is required.<sup>2</sup>

This provision provides a private cause of action to shippers<sup>3</sup> and owner-operators<sup>4</sup> for damages based on claims of alleged violations of those statutes. While there is authority that it provides a private right of action against a motor carrier for personal injury where the carrier violated the requirement that it provide safe and adequate equipment,<sup>5</sup> it has also been held that the statute is limited to commercial disputes and does not create a private cause of action for damages in a personal injury action.<sup>6</sup>

A carrier is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in an applicable tariff.<sup>7</sup>

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#### Footnotes

- <sup>1</sup> 49 U.S.C.A. § 14704(a)(2), referring to 49 U.S.C.A. §§ 13101 to 14916.
- <sup>2</sup> *Owner-Operator Independent Drivers Ass'n, Inc. v. Swift Transp. Co., Inc. (AZ)*, 632 F.3d 1111, 74 A.L.R. Fed. 2d 687 (9th Cir. 2011).
- <sup>3</sup> *Fulfillment Services Inc. v. United Parcel Service, Inc.*, 528 F.3d 614 (9th Cir. 2008).
- <sup>4</sup> *Owner-Operator Independent Drivers Ass'n v. Mayflower Transit, Inc.*, 161 F. Supp. 2d 948 (S.D. Ind. 2001); *Cunningham v. Lund Trucking Co.*, 662 F. Supp. 2d 1262 (D. Or. 2009).
- <sup>5</sup> *Marrier v. New Penn Motor Express, Inc.*, 140 F. Supp. 2d 326 (D. Vt. 2001), referring to 49 U.S.C.A. § 14101(a), discussed in § 91.
- <sup>6</sup> *Stewart v. Mitchell Transport*, 241 F. Supp. 2d 1216 (D. Kan. 2002) (disagreeing with *Marrier*, and noting that the legislative history does not indicate that Congress intended to expand the scope of the Motor Carrier Act to cover personal injury claims where there was no such coverage before); *Schramm v. Foster*, 341 F. Supp. 2d 536 (D. Md. 2004); *Courtney v. Ivanov*, 41 F. Supp. 3d 453 (W.D. Pa. 2014); *Craft v. Graebel-Oklahoma Movers, Inc.*, 2007 OK 79, 178 P.3d 170 (Okla. 2007).
- <sup>7</sup> 49 U.S.C.A. § 14704(b).

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##### (2) Liability and Damages

## § 101. Rights and remedies of persons injured by carriers or brokers—Procedures for filing complaint or bringing action

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  34

### A.L.R. Library

[Construction and Application of Truth-in-Leasing Regulations, 49 C.F.R. ss376.1 et seq., Under Motor Carrier Act, 49 U.S.C.A. ss14101, 14102, 14704, 74 A.L.R. Fed. 2d 521](#)

### Treatises and Practice Aids

As to civil enforcement suits, generally, see Federal Procedural Forms, Transportation [\[Westlaw®\(r\): Search Query\]](#)

A person may file a complaint with the Surface Transportation Board or the Secretary of Transportation, as applicable, or bring a civil action to enforce such liability.<sup>1</sup> It is necessary to allege damages resulting from charges collected under an

allegedly unlawful tariff.<sup>2</sup>

The Board or Secretary, upon making an award, is required to order that the carrier pay the amount awarded by a specific date; the Board or Secretary may order a carrier or broker to pay damages only when the proceeding is on complaint.<sup>3</sup> The person for whose benefit an order requiring the payment of money is made may bring a civil action to enforce that order if the carrier or broker does not pay the amount awarded by the date specified in the order.<sup>4</sup> In addition to the federal district courts, a state court of general jurisdiction having jurisdiction of the parties has jurisdiction to enforce such an order.<sup>5</sup>

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#### Footnotes

<sup>1</sup> 49 U.S.C.A. § 14704(c)(1).

<sup>2</sup> *Fulfillment Services Inc. v. United Parcel Service, Inc.*, 528 F.3d 614 (9th Cir. 2008).

<sup>3</sup> 49 U.S.C.A. § 14704(c)(2)(A).

<sup>4</sup> 49 U.S.C.A. § 14704(c)(2)(B).

<sup>5</sup> 49 U.S.C.A. § 14704(d)(1).

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## 13 Am. Jur. 2d Carriers § 102

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### Part One. In General

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##### 4. Regulation of Motor Carriers, Water Carriers, Brokers, and Freight Forwarders

##### b. Liability and Enforcement

##### (2) Liability and Damages

## § 102. Liability of carriers under receipts and bills of lading

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  19, 36

### A.L.R. Library

[Preemption of State Law Under Carmack Amendment to Interstate Commerce Act, 49 U.S.C.A. sec. 14706, and Predecessor Statutes—Shipments Other than Machinery, Livestock, Food, or Beverages, 199 A.L.R. Fed. 169](#)

[Preemption of State Law Under Carmack Amendment to Interstate Commerce Act, 49 U.S.C.A. sec. 14706, and Predecessor Statutes—Machinery Shipments, 194 A.L.R. Fed. 231](#)

[Preemption of State Law Under Carmack Amendment to Interstate Commerce Act, 49 U.S.C.A. sec. 14706, and Predecessor Statutes—Food, Beverage, or Livestock Shipments, 193 A.L.R. Fed. 585](#)

### Treatises and Practice Aids

As to enforcement of liability under Interstate Receipts and Bills of Lading (Carmack Amendment), generally, see Federal



Procedural Forms, Transportation [Westlaw®(r): Search Query]

A motor carrier that is required to issue a receipt or bill of lading and any other carrier that delivers the property and is providing transportation or service subject to federal jurisdiction are liable to the person entitled to recover under the receipt or bill of lading.<sup>1</sup> A failure to issue a receipt or bill of lading does not affect this liability.<sup>2</sup> The liability imposed is for the actual loss or injury to the property caused by (1) the receiving carrier, (2) the delivering carrier, or (3) another carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading and, except in the case of a freight forwarder, applies to property reconsigned or diverted under a tariff.<sup>3</sup>

A freight forwarder is both the receiving and delivering carrier. When a freight forwarder provides service and uses a motor carrier subject to federal jurisdiction to receive property from a consignor, the motor carrier may execute the bill of lading or shipping receipt for the freight forwarder with its consent. With the consent of the freight forwarder, a motor carrier may deliver property for a freight forwarder on the freight forwarder's bill of lading, freight bill, or shipping receipt to the consignee named in it, and receipt for the property may be made on the freight forwarder's delivery receipt.<sup>4</sup>

The carrier issuing the receipt or bill of lading or delivering the property has certain recovery rights against the carrier over whose line or route the loss or injury occurred.<sup>5</sup> A freight broker is a "person entitled to recover" under this provision,<sup>6</sup> but a nonshipper broker<sup>7</sup> and the purchaser of the freight<sup>8</sup> are not.

A civil action may be brought against a delivering carrier in a district court of the United States or in a state court<sup>9</sup> or against the carrier alleged to have caused the loss or damage in the judicial district in which such loss or damage is alleged to have occurred.<sup>10</sup> The statute generally preempts state law causes of action that a shipper might pursue against a carrier for lost or damaged goods.<sup>11</sup>

A prima facie case is presented where it is established that goods were delivered to a trucking company in good condition and they had suffered water damage by the time they arrived at the destination, and the driver signed a clean bill of lading without noting any problem with the containers.<sup>12</sup> However, when the contents of a shipment are not visible or open for inspection, as where cargo is transferred to the carrier in a sealed container, a clean bill of lading is not sufficient to establish delivery of the goods to the carrier in good condition.<sup>13</sup>

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#### Footnotes

<sup>1</sup> 49 U.S.C.A. § 14706(a)(1).

<sup>2</sup> 49 U.S.C.A. § 14706(a)(1).

<sup>3</sup> 49 U.S.C.A. § 14706(a)(1).

A cleaning service provider's cleaning of a transportation service provider's trailer was a service related to the movement of property in interstate commerce, and thus, the transportation service provider's claims against the cleaning service provider were preempted, although the cleaning service provider was not a party to the bill of lading, where the cleaning service provider was providing transportation and was acting as a motor carrier and, thus, was a carrier subject to the statute, the examples of services listed in the statute were an illustrative and nonexhaustive list, the service was analogous to several examples in the statute, and the terms of the bill of lading were irrelevant to the applicability of the statute. *Heniff Transportation Systems, L.L.C. v. Trimac Transportation Services, Incorporated*, 847 F.3d 187 (5th Cir. 2017).

<sup>4</sup> 49 U.S.C.A. § 14706(a)(2).

<sup>5</sup> 49 U.S.C.A. § 14706(b).

- <sup>6</sup> REI Transport, Inc. v. C.H. Robinson Worldwide, Inc., 519 F.3d 693 (7th Cir. 2008).
- <sup>7</sup> Exel, Inc. v. Southern Refrigerated Transport, Inc., 807 F.3d 140 (6th Cir. 2015).
- <sup>8</sup> Flying Phoenix Corp. v. Creative Packaging Machinery, Inc., 681 F.3d 1198 (10th Cir. 2012).
- <sup>9</sup> 49 U.S.C.A. § 14706(d)(1).
- <sup>10</sup> 49 U.S.C.A. § 14706(d)(2).
- <sup>11</sup> Certain Underwriters at Interest at Lloyds of London v. United Parcel Service of America, Inc., 762 F.3d 332 (3d Cir. 2014) (including state law claims for breach of contract, negligence and common-law conversion); REI Transport, Inc. v. C.H. Robinson Worldwide, Inc., 519 F.3d 693 (7th Cir. 2008) (it does not, however, preempt a carrier's breach of contract claims against a freight forwarder for failure to pay).
- <sup>12</sup> American Nat. Fire Ins. Co. ex rel. Tabacalera Contreras Cigar Co. v. Yellow Freight Systems, Inc., 325 F.3d 924 (7th Cir. 2003).
- <sup>13</sup> Security Ins. Co. of Hartford v. Old Dominion Freight Line Inc., 391 F.3d 77 (2d Cir. 2004).

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## 13 Am. Jur. 2d Carriers § 103

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### Carriers

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### Part One. In General

#### III. Regulation and Control of Carrier's Operations

##### C. Federal Regulation

##### 4. Regulation of Motor Carriers, Water Carriers, Brokers, and Freight Forwarders


##### b. Liability and Enforcement

##### (2) Liability and Damages

## § 103. Limitations of actions by and against motor carriers, water carriers, brokers, or freight forwarders

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  18(3), 34

### A.L.R. Library

[Construction and Application of Truth-in-Leasing Regulations, 49 C.F.R. ss376.1 et seq., Under Motor Carrier Act, 49 U.S.C.A. ss14101, 14102, 14704, 74 A.L.R. Fed. 2d 521](#)

### Forms

Forms relating to request for delivery of goods without surrender of document, see Am. Jur. Legal Forms 2d, Uniform Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

A carrier may not provide by rule, contract, or otherwise a period of less than nine months for filing a claim against it and a

period of less than two years for bringing a civil action against it.<sup>1</sup>

A catchall statute of limitations for civil actions arising under federal statutes,<sup>2</sup> rather than those for actions brought by and against motor carriers, applies to a suit under the leasing regulations.<sup>3</sup>

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#### Footnotes

- <sup>1</sup> 49 U.S.C.A. § 14706(e)(1).  
As to the limitations periods for claims relating to undercharges or overcharges, see §§ 170, 186.
- <sup>2</sup> 28 U.S.C.A. § 1658, discussed in Am. Jur. 2d, Limitation of Actions § 107.
- <sup>3</sup> Owner-Operator Independent Drivers Ass'n, v. United Van Lines, LLC, 556 F.3d 690 (8th Cir. 2009); Brinker v. Namcheck, 577 F. Supp. 2d 1052 (W.D. Wis. 2008).

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## 13 Am. Jur. 2d Carriers § 104

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 4. Regulation of Motor Carriers, Water Carriers, Brokers, and Freight Forwarders

### b. Liability and Enforcement

### (3) Penalties

## § 104. Punishment of corporation for violations by individuals

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  [20\(1\)](#), [21\(1\)](#), [37\(1\)](#), [38\(1\)](#), [38\(8\)](#)

A statutory violation by a director, officer, receiver, trustee, lessee, agent, or employee of a corporate carrier providing transportation or service subject to federal jurisdiction is also a violation by that corporation, and the prescribed penalties<sup>1</sup> apply to that violation.<sup>2</sup> When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by a carrier are considered the actions and omissions of the carrier, as well as of the individual.<sup>3</sup>

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### Footnotes

<sup>1</sup> [49 U.S.C.A. §§ 14901 to 14916.](#)

<sup>2</sup> [49 U.S.C.A. § 14911.](#)

<sup>3</sup> [49 U.S.C.A. § 14911.](#)



## 13 Am. Jur. 2d Carriers § 105

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 4. Regulation of Motor Carriers, Water Carriers, Brokers, and Freight Forwarders


### b. Liability and Enforcement

### (3) Penalties

## § 105. General civil penalties for motor carriers, water carriers, brokers, and freight forwarders

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  20(1), 37(1)

Civil penalties are prescribed for motor carriers and freight forwarders for:

- recordkeeping and reporting violations<sup>1</sup>
- the failure to comply with rules applying to the transportation of household goods<sup>2</sup> and falsifying documents and charging for unnecessary services in such transportation<sup>3</sup>

A civil penalty is prescribed for motor carriers for a violation of the statutes regulating the transportation of hazardous waste.<sup>4</sup>

A civil penalty is prescribed for motor carriers, water carriers, brokers and freight forwarders for the unlawful disclosure of shipment and routing information.<sup>5</sup>

A civil penalty is prescribed for any person who knowingly authorizes, consents to, or permits, directly or indirectly, either alone or in conjunction with any other person, a violation of the requirements for a person to provide interstate brokerage services.<sup>6</sup>

A general civil penalty is provided for a violation of a provision of those statutes or a regulation or order prescribed under them where another civil penalty is not provided.<sup>7</sup> Under this provision a separate violation occurs each day the violation continues.<sup>8</sup>

Footnotes

- <sup>1</sup> 49 U.S.C.A. §§ 14901(a), 14907.
- <sup>2</sup> 49 U.S.C.A. § 14901(d).
- <sup>3</sup> 49 U.S.C.A. § 14901(e).
- <sup>4</sup> 49 U.S.C.A. § 14901(b).
- <sup>5</sup> 49 U.S.C.A. § 14908(a).
- <sup>6</sup> 49 U.S.C.A. § 14916(c).
- <sup>7</sup> 49 U.S.C.A. § 14910.  
As to provisions that contain both civil and criminal penalties, see § 106.  
As to civil penalties prescribed for rebates or concessions, see § 252.  
As to civil penalty proceedings, see 49 U.S.C.A. § 14914.
- <sup>8</sup> 49 U.S.C.A. § 14910.

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### Part One. In General

#### III. Regulation and Control of Carrier's Operations

##### C. Federal Regulation

#### 4. Regulation of Motor Carriers, Water Carriers, Brokers, and Freight Forwarders

##### b. Liability and Enforcement

##### (3) Penalties

## § 106. Civil or criminal penalties for motor carriers, water carriers, brokers, and freight forwarders

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  20(1), 21(1), 37(1), 38(1), 38(8)

Civil and criminal penalties are provided for the violation of the statutes dealing with tariff violations,<sup>1</sup> the loading and unloading of motor vehicles,<sup>2</sup> and the failure to give up possession of household goods.<sup>3</sup>

A civil penalty is prescribed for any person that tries to evade the regulation of carriers and brokers, and such person may be subject to criminal penalties.<sup>4</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 14903.

<sup>2</sup> 49 U.S.C.A. § 14905.

<sup>3</sup> 49 U.S.C.A. § 14915.  
As to civil penalty proceedings, see 49 U.S.C.A. § 14914.

<sup>4</sup> 49 U.S.C.A. § 14906.

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 4. Regulation of Motor Carriers, Water Carriers, Brokers, and Freight Forwarders

### b. Liability and Enforcement

### (3) Penalties

## § 107. Criminal penalties for motor carriers, water carriers, brokers, and freight forwarders

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  21(1), 38(1), 38(8)

Criminal penalties are imposed for failure to obey a subpoena to appear and testify or produce records<sup>1</sup> and making a fraudulent weight on a shipment of household goods.<sup>2</sup>

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### Footnotes

<sup>1</sup> [49 U.S.C.A. § 14909.](#)

<sup>2</sup> [49 U.S.C.A. § 14912.](#)

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 5. Regulation of Pipeline Carriers

### a. In General

## § 108. Jurisdiction of STB over pipeline carriers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 24

Federal statutes regarding pipeline carriers define the Surface Transportation Board's (STB) jurisdiction over transportation by pipeline, or by pipeline and railroad or water, when transporting a commodity other than water, gas, or oil,<sup>1</sup> and preclude jurisdiction over transportation entirely in a state.<sup>2</sup> The federal statutes do not affect the power of a state in exercising its police power to require reasonable intrastate transportation by carriers providing transportation subject to the jurisdiction of the Board unless the state requirement is inconsistent with an order of the Board or is prohibited by those statutes.<sup>3</sup>

The Board is required to exempt persons, transactions, or services when it finds that the application in whole or in part of a provision of the federal statutes is not necessary to carry out the federal transportation policy, and either the transaction or service is of limited scope or the application in whole or in part of the provision is not needed to protect shippers from abuse of market power.<sup>4</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 15301(a).

<sup>2</sup> 49 U.S.C.A. § 15301(b).

<sup>3</sup> 49 U.S.C.A. § 15301(c).

<sup>4</sup> 49 U.S.C.A. § 15302(a).

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 5. Regulation of Pipeline Carriers

### a. In General

## § 109. Duty of pipeline carrier to provide transportation and service upon request

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 24

A pipeline carrier providing transportation or service must provide it upon reasonable request.<sup>1</sup> A pipeline carrier must also provide to any person on request the carrier's rates and other service terms.<sup>2</sup>

A pipeline carrier may not increase any common carrier rates or change any common carrier service terms unless 20 days have expired after written or electronic notice is provided to any person who within the previous 12 months (1) has requested those rates or terms, or (2) has made arrangements with the carrier for a shipment that would be subject to the increased rates or changed terms.<sup>3</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 15701(a).

<sup>2</sup> 49 U.S.C.A. § 15701(b).

<sup>3</sup> 49 U.S.C.A. § 15701(c).

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Works.

## 13 Am. Jur. 2d Carriers § 110

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 5. Regulation of Pipeline Carriers

### a. In General

## § 110. Records, inspections, and reports of pipeline carriers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10, 24

The Surface Transportation Board may prescribe the form of records required to be prepared or compiled by pipeline carriers and lessors, including records related to movement of traffic and receipts and expenditure of money.<sup>1</sup> The Board also has certain inspection powers<sup>2</sup> and may require the filing of reports containing answers to questions asked by it.<sup>3</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 15722(a).

<sup>2</sup> 49 U.S.C.A. § 15722(b).

<sup>3</sup> 49 U.S.C.A. § 15723.



## 13 Am. Jur. 2d Carriers § 111

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### Carriers

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 5. Regulation of Pipeline Carriers

### b. Liability and Enforcement

## § 111. Initiation and conclusion of investigation of pipeline carrier; civil action by STB

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  10

Generally, the Surface Transportation Board (STB) may begin an investigation of pipeline carriers only on complaint, and if the Board finds that a pipeline carrier is violating the applicable statutes, it must take appropriate action to compel compliance with them. The Board must provide the carrier notice of the investigation and an opportunity for a proceeding.<sup>1</sup>

A person, including a governmental authority, may file with the Board a complaint about a violation of an applicable statute by a pipeline carrier which must state the facts that are the subject of the violation.<sup>2</sup> The Board may dismiss a complaint it determines does not state reasonable grounds for investigation and action. However, the Board may not dismiss a complaint because of the absence of direct damage to the complainant.<sup>3</sup>

A formal investigative proceeding begun by the Board will be dismissed automatically unless it is concluded by the Board with administrative finality by the end of the third year after when it was begun.<sup>4</sup> The Board may bring a civil action to enforce its order, except a civil action to enforce an order for the payment of money, when such order is violated by a pipeline carrier.<sup>5</sup>

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### Footnotes

<sup>1</sup> [49 U.S.C.A. § 15901\(a\)](#).

<sup>2</sup> 49 U.S.C.A. § 15901(b).

<sup>3</sup> 49 U.S.C.A. § 15901(b).

<sup>4</sup> 49 U.S.C.A. § 15901(c).

<sup>5</sup> 49 U.S.C.A. § 15902.

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 5. Regulation of Pipeline Carriers

### b. Liability and Enforcement

## § 112. Enforcement against pipeline carrier by attorney general

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  34

The attorney general may, and on request of the Surface Transportation Board must, bring court proceedings to enforce the federal statutes governing pipeline carriers or a regulation or order of the Board and to prosecute a person violating those provisions.<sup>1</sup> The federal government may also bring a civil action on behalf of a person to compel a pipeline carrier to provide transportation or service to that person in compliance with the governing statutes at the same rate charged or on conditions as favorable as those given by the carrier for like traffic under similar conditions to another person.<sup>2</sup>

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### Footnotes

<sup>1</sup> [49 U.S.C.A. § 15903\(a\).](#)

<sup>2</sup> [49 U.S.C.A. § 15903\(b\).](#)

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 5. Regulation of Pipeline Carriers

### b. Liability and Enforcement

## § 113. Liability of pipeline carrier; private remedies against pipeline carrier

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  18(3), 18(4), 19, 34, 36

### Treatises and Practice Aids

As to private enforcement of certain board orders, generally, see Federal Procedural Forms, Transportation [\[Westlaw®\(r\): Search Query\]](#)

A person injured because a pipeline carrier providing transportation or service does not obey an order of the Surface Transportation Board, except an order for the payment of money, may bring a civil action to enforce that order.<sup>1</sup>

A pipeline carrier providing transportation is liable to a person for amounts charged that exceed the applicable rate for the transportation.<sup>2</sup> A pipeline carrier providing transportation is also liable for damages sustained by a person as a result of an act or omission of that carrier in violation of the federal statutes regulating carriers.<sup>3</sup> In order to enforce liability against a pipeline carrier providing transportation, a person may file a complaint with the Board<sup>4</sup> or bring a civil action.<sup>5</sup> The Board may order a carrier providing transportation to pay damages only when the proceeding is on complaint. When the Board makes an award, the Board must order the carrier to pay the amount awarded by a specific date. The person for whose benefit an order of the Board requiring the payment of money is made may bring a civil action to enforce that order if the carrier does not pay the amount awarded by the date payment was ordered to be made.<sup>6</sup>

When a person begins a civil action to enforce an order of the Board requiring the payment of damages by a pipeline carrier providing transportation, the district courts of the United States or a state court of general jurisdiction having jurisdiction of the parties has jurisdiction to enforce the order.<sup>7</sup> The district court must award a reasonable attorney's fee as a part of the damages for which a carrier is found liable.<sup>8</sup>

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#### Footnotes

- <sup>1</sup> 49 U.S.C.A. § 15904(a).
- <sup>2</sup> 49 U.S.C.A. § 15904(b)(1).
- <sup>3</sup> 49 U.S.C.A. § 15904(b)(1), referring to 49 U.S.C.A. §§ 15101 to 16106.
- <sup>4</sup> § 111.
- <sup>5</sup> 49 U.S.C.A. § 15904(c)(1).
- <sup>6</sup> 49 U.S.C.A. § 15904(c)(2).
- <sup>7</sup> 49 U.S.C.A. § 15904(d)(1).  
As to the time limits for filing an action, see §§ 170, 187.
- <sup>8</sup> 49 U.S.C.A. § 15904(d)(2).

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## 13 Am. Jur. 2d Carriers § 114

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 5. Regulation of Pipeline Carriers

### b. Liability and Enforcement

## § 114. Liability of pipeline carrier under receipts and bills of lading

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  19, 34, 36

A pipeline carrier providing transportation or service must issue a receipt or bill of lading for property it receives for transportation. That carrier and any other carrier that delivers the property and is providing transportation or service subject to Surface Transportation Board jurisdiction are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed is for the actual loss or injury to the property caused by the carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading. The failure to issue a receipt or bill of lading does not affect the liability of a carrier.<sup>1</sup>

The carrier issuing the receipt or bill of lading or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.<sup>2</sup>

A civil action may be brought against a delivering carrier in a district court of the United States or in a state court.<sup>3</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 15906(a).

<sup>2</sup> 49 U.S.C.A. § 15906(b).

<sup>3</sup> 49 U.S.C.A. § 15906(c).  
As to the time limits for filing an action, see §§ 170, 187.

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 5. Regulation of Pipeline Carriers

### b. Liability and Enforcement

## § 115. Limitation of actions by or against pipeline carriers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  34

A pipeline carrier may not provide, by rule, contract, or otherwise, a period of less than nine months for filing a claim against it under a receipt or bill of lading<sup>1</sup> and a period of less than two years for bringing a civil action against it.<sup>2</sup> The period for bringing a civil action is computed from the date the carrier gives a person written notice that the carrier has disallowed any part of the claim specified in the notice.<sup>3</sup>

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### Footnotes

<sup>1</sup> As to liability under a receipt or bill of lading, see [§ 114](#).

<sup>2</sup> [49 U.S.C.A. § 15906\(d\)](#).  
As to statutes of limitation for claims of undercharges or overcharges, see §§ [170](#), [186](#).

<sup>3</sup> [49 U.S.C.A. § 15906\(d\)](#).





## 13 Am. Jur. 2d Carriers § 116

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation


### 5. Regulation of Pipeline Carriers

### c. Penalties for Pipeline Carriers

## § 116. Civil penalties for pipeline carriers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  20(1), 37(1)

Generally, a pipeline carrier providing interstate transportation, an officer or agent of that carrier, or a receiver, trustee, lessee, or agent of one of them who knowingly violates the federal statutes governing pipeline carriers<sup>1</sup> or an order of the Surface Transportation Board under it is liable for a civil penalty.<sup>2</sup> Liability is incurred for each distinct violation, and a separate violation occurs for each day the violation continues.<sup>3</sup>

Civil penalties are also provided for:

- the failure to make, prepare, preserve, or submit to the Surface Transportation Board a required record<sup>4</sup>
  - a violation of the inspection requirements<sup>5</sup>
  - the failure to make a required report to the Board or completely and truthfully answer a question asked by the Board<sup>6</sup>
- A separate violation occurs for each day any one of the above violations continues<sup>7</sup> recordkeeping and reporting violations.<sup>8</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. §§ 15101 to 16106.

<sup>2</sup> 49 U.S.C.A. § 16101(a).

<sup>3</sup> 49 U.S.C.A. § 16101(a).

<sup>4</sup> 49 U.S.C.A. § 16101(b)(1).

<sup>5</sup> 49 U.S.C.A. § 16101(b)(2) (referring to requirements imposed under [49 U.S.C.A. § 15722](#)).

<sup>6</sup> 49 U.S.C.A. § 16101(b)(3).

<sup>7</sup> 49 U.S.C.A. § 16101(b)(4).

<sup>8</sup> 49 U.S.C.A. § 16102.

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## 13 Am. Jur. 2d Carriers § 117

American Jurisprudence, Second Edition | May 2021 Update

### Carriers

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 5. Regulation of Pipeline Carriers

### c. Penalties for Pipeline Carriers

## § 117. Civil and criminal penalties for pipeline carriers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  20(1), 21(1), 22, 37(1), 38(1), 38(8)

With some exceptions enumerated by statute,<sup>1</sup> a pipeline carrier providing transportation, or an officer, agent, or employee of that carrier, or another person authorized to receive information from that carrier, that knowingly discloses to another person, except the shipper or consignee, or a person who solicits or knowingly receives information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier for transportation without the consent of the shipper or consignee, if that information may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor the business transactions of the shipper or consignee, is liable to the United States for a civil penalty.<sup>2</sup> An employee of the Surface Transportation Board delegated to make an inspection or examination who knowingly discloses information acquired during that inspection or examination, except as directed by the Board, a court, or a judge of that court, is subject to criminal penalties.<sup>3</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 16103(b).

<sup>2</sup> 49 U.S.C.A. § 16103(a).

<sup>3</sup> 49 U.S.C.A. § 16103(c).

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## 13 Am. Jur. 2d Carriers § 118

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### Carriers

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### Part One. In General

#### III. Regulation and Control of Carrier's Operations

##### C. Federal Regulation

##### 5. Regulation of Pipeline Carriers

##### c. Penalties for Pipeline Carriers

## § 118. Criminal penalties for pipeline carriers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  21(1), 38(1), 38(8)

Criminal penalties are imposed for the violation of certain recordkeeping and reporting requirements<sup>1</sup> and disobeying a subpoena.<sup>2</sup>

When another criminal penalty is not provided under the federal statutes governing pipeline carriers, and a carrier that is a corporation, a director or officer of the corporation, or a receiver, trustee, lessee, or person acting for or employed by the corporation, that alone or with another person willfully violates those statutes, is subject to a criminal penalty.<sup>3</sup> A separate violation occurs each day such a violation continues.<sup>4</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. § 16102.

<sup>2</sup> 49 U.S.C.A. § 16104.

<sup>3</sup> 49 U.S.C.A. § 16105.

<sup>4</sup> 49 U.S.C.A. § 16105.

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## 13 Am. Jur. 2d Carriers § 119

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### Carriers

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### C. Federal Regulation

### 5. Regulation of Pipeline Carriers

### c. Penalties for Pipeline Carriers

## § 119. Punishment of corporation for violations committed by certain individuals

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  21(1), 38(1), 38(8)

An act or omission that would be a violation of the interstate transportation statutes,<sup>1</sup> if committed by a director, officer, receiver, trustee, lessee, agent, or employee of a pipeline carrier providing transportation or service subject to the statutes regulating pipeline carriers<sup>2</sup> that is a corporation is also a violation of those statutes by that corporation.<sup>3</sup> The penalties for pipeline carriers<sup>4</sup> apply to that violation.<sup>5</sup> When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by that carrier are considered to be the actions and omissions of that carrier as well as that individual.<sup>6</sup>

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### Footnotes

<sup>1</sup> 49 U.S.C.A. §§ 10101 to 16106.

<sup>2</sup> 49 U.S.C.A. §§ 15101 to 16106.

<sup>3</sup> 49 U.S.C.A. § 16106.

<sup>4</sup> §§ 116 to 119.

<sup>5</sup> 49 U.S.C.A. § 16106.



<sup>6</sup> 49 U.S.C.A. § 16106.

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